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No. 581

Docket No. 24457

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United States Court of Appeals

FOR THE SECOND CIRCUIT

UNITED STATES OF AMERICA,
Appellee,

—against—

JAMES W. MILLER,
Defendant-Appellant.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

S. D. N. Y. File No. C-146-97

APPELLANT'S APPENDIX

Volume I—Pages 1a-503a

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UNITED STATES COURT OF APPEALS
FILED
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SECOND CIRCUIT

INDEX

PAGE

Statement Pursuant to Rule 15(b) 1a
Indictment 3a
Judgment and Commitment 5a
Government's Exhibit 22 ..... 6a
Government's Exhibit 23 ..... 7a
Government's Exhibit 24 ..... 8a
Testimony 10a

Motion for Mistrial—Denied 435a
Motion for Judgment of Acquittal 479a
Argument on Motion for Judgment of Acquittal..484a
Excerpts from Government's Exhibit 71 Read into Record 787a
Renewal of Motion for Judgment of Acquittal..802a
Motion for Mistrial—Denied 808a
Denial of Motion for Judgment of Acquittal.....808a
Summation on Behalf of Defendant 817a
Charge of the Court 862a
Verdict 912a
Motion to Increase Bail 912a
Motion to Set Aside Verdict 913a
Denial of Motion to Set Aside Verdict 919a
Statement of Defendant's Counsel Prior to Passing of Sentence 921a
Sentence 928a

GOVERNMENT'S WITNESSES

Nat Chernoff:
Direct 10a

Eugene Paul Arey:
Direct 11a
Cross 18a

Government's Witnesses (Continued)

PAGE

Irving Mishel:
Direct 19a
Cross 57a

Sidney Hack:
Direct 248a
Cross 251a

John J. Brennan:
Direct 251a
Cross 252a
Re-direct 253a

Virginia Graef:
Direct 254a
Cross 265a
(Recalled)
Cross 305a

William Heffelfinger:
Direct 273a
Cross 280a
Re-direct 304a

Francis Horan, Jr.:
Direct 338a
Cross 344a

James J. Lucey, Jr.:
Direct 359a
Cross 365a
Re-direct 367a

Fred Heddesheimer:
Direct 373a

Elizabeth Skotchdopole:
Direct 378a

Government's Witnesses (Continued)

PAGE

I. Alfred Levy:
Direct 382a
Cross 385a
Re-direct 386a

Max Dorff:
Direct 387a
Cross 394a

Edward F. Sweeney:
Direct 397a
Cross 400a
Re-direct 424a

Sam Siegel:
Direct 430a
Cross 435a
Re-direct 457a

Norton Schnabel:
Direct 458a
Cross 460a

George J. Sershen:
Direct 464a
Cross 469a

DEFENDANT'S WITNESSES

John J. Brennan:
Direct 504a
Cross 528a
Re-direct 547a

Defendant's Witnesses (Continued)

PAGE

Kenneth G. Wilmot:
Direct 554a
Cross 560a
Re-direct 578a
Re-cross 581a

James W. Miller:
Direct 583a
Cross 662a
Re-direct 760a

John A. McAvinue, Jr.:
Direct 792a

Kenneth Rayburn:
Direct 799a

United States Court of Appeals

FOR THE SECOND CIRCUIT

UNITED STATES OF AMERICA,

Appellee,

—against—

JAMES W. MILLER,

Defendant-Appellant.

S. D. N. Y. File No. C-146-97

Statement Pursuant to Rule 15(b)

The indictment was filed in the Southern District of New York on December 21, 1954, containing three counts charging the defendant with the crimes of making false and fraudulent statements in a matter within the jurisdiction of the Fiscal Service of the United States Treasury Department, 18 U. S. C. §1001. On January 17, 1955 the defendant pleaded not guilty and was admitted to $10,000.00 bail. A motion filed on June 2, 1956 to dismiss Counts I and II of the indictment, or in the alternative for a bill of particulars, was denied as to dismissal of said counts of the indictment, and granted and denied in part as to the bill of particulars, by order filed June 26, 1956. Trial was held from October 17, 1956 to November 2, 1956 before Hon. Lawrence E. Walsh and a jury. On November 2, 1956 a verdict of guilty on all three counts was rendered, and defendant was continued in bail. On November 30, 1956, defendant's motion for

Statement Pursuant to Rule 15(b)

judgment of acquittal or in the alternative for a new trial was denied and he was sentenced to a term of five years to cover all three counts to run concurrently, and judgment of conviction was filed. The District Court granted bail in the same amount pending appeal on condition that the appeal be perfected and appellant's brief be filed by January 15, 1957. Notice of Appeal was filed on December 5, 1956, and the record on appeal was docketed in the Court of Appeals on January 7, 1957.

Indictment

(1631)

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

No. C 146-97

UNITED STATES OF AMERICA

—against—

JAMES W. MILLER,

Defendant.

On or about December 26, 1951 at the Southern District of New York, James W. Miller, the defendant herein, in a matter within the jurisdiction of a department of the United States, namely, the Fiscal Service of the United States Treasury Department, did unlawfully, wilfully and knowingly make a false and fraudulent statement as to a material fact to the effect that a quantity of bonds in the names of members of the Nat Chernoff family were properly cashed in accordance with procedures laid down by circular letter of the United States Treasury Department, whereas in truth and in fact as the defendant then and there well knew, the said bonds were not properly cashed in accordance with procedures laid down by the said circular letter. (Title 18, Section 1001, United States Code).

COUNT II

The Grand Jury further charges:

On or about April 4, 1952, at the Southern District of New York, James W. Miller, the defendant herein, in a matter within the jurisdiction of a department of the

United States, namely, the Fiscal Service, of the United States Treasury Department, did unlawfully, wilfully and knowingly (1632) make a false and fraudulent statement as to a material fact to the effect that a quantity of bonds in the names of members of the Nat Chernoff family were properly cashed in accordance with procedures laid down by circular letter of the United States Treasury Department, whereas in truth and in fact as the defendant then and there well knew, the said bonds were not properly cashed in accordance with procedures laid down by the said circular letter. (Title 18, Section 1001, United States Code).

COUNT III

The Grand Jury further charges:

On or about June 4, 1952, at the Southern District of New York, James W. Miller, the defendant herein, in a matter within the jurisdiction of a department of the United States, namely, Fiscal Service of the United States Treasury Department, did unlawfully, wilfully and knowingly make and cause to be made, a false and fradulent statement as to a material fact to the effect that one Irving Mishel introduced a person to the defendant, James W. Miller, as Mr. Chernoff, whereas in truth and in fact as the defendant then and there well knew, he did not introduce any person to the defendant as Mr. Chernoff. (Title 18, Section 1001, United States Code).

.....

J. EDWARD LUMBARD,
United States Attorney.

.....

Foreman

Judgment and Commitment

[SAME TITLE]

(1704)

On this 30th day of November, 1956 came the attorney for the government and the defendant appeared in person and by counsel.

IT IS ADJUDGED that the defendant has been convicted upon his plea of not guilty and a verdict of guilty by a jury, of the offense of unlawfully, wilfully and knowingly making false and fraudulent statements as to material facts in matters within the jurisdiction of the Fiscal Service of the United States Treasury Department. (Title 18, Sec. 1001 USC) as charged in counts 1-2-3 and the court having asked the defendant whether he has anything to say why judgment should not be pronounced, and no sufficient cause to the contrary being shown or appearing to the Court,

IT IS ADJUDGED that the defendant is guilty as charged and convicted.

IT IS ADJUDGED that the defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of five (5) years on counts 1, 2 and 3 to run concurrently. Bail fixed in the same amount pending appeal on condition that appeal be perfected, and appellants briefs be filed by January 15, 1957.

IT IS ORDERED that the Clerk deliver a certified copy of this judgment and commitment to the United States Marshal or other qualified officer and that the copy serve as the commitment of the defendant.

LAWRENCE E. WALSH,
United States District Judge.

Government's Exhibit 22

December 26, 1951

Mr. E. F. Bartelt
Fiscal Assistant Secretary
Treasury Department
Fiscal Service
Washington 25, D. C.

Dear Sir:

We have your letter of November 16, 1951, regarding the payment by our Bank of fifty-nine savings bonds bearing the names of various members of the Nat Chernoff family at the total redemption value of $6,684.50.

At the time the investigation was made by your Department we were informed that the bonds were properly cashed in accordance with procedure laid down in your official circular and consequently no claim would be made against us. We note the several matters listed in the second paragraph of your letter as being disclosed by your investigation, but call your attention to the fact that item (2) is incorrect according to the information that we have and which was given to and confirmed by your investigators.

Under the circumstances we believe that we should be granted relief from liability for the loss resulting from the erroneous payment.

Very truly yours,

JAMES W. MILLER
President

JWM:ed

Government's Exhibit 23

April 4, 1952

Treasury Department
Fiscal Service
Chicago 54, Illinois

Attention: Mr. Chas. D. Peyton
Deputy Commissioner in Charge

Gentlemen:

We have your letter of March 11th requesting reimbursement on account of alleged erroneous redemption of United States savings bonds bearing the names of various members of the Nat Chernoff family in the amount of $6,684.50. Reply has been delayed because of the overlapping absences of our attorney and the writer.

We regret that you are insisting on reimbursement because we feel that these bonds were cashed in good faith and within the meaning, letter and spirit of Paragraph 4 of the Treasury Department's Circular covering such redemptions dated December 19, 1947. When you originally called this matter to our attention we notified our bonding company, but subsequently informed them that the investigation made by your Department indicated that the bonds were properly cashed in accordance with the procedure laid down in your official circular as advised in our letter to you dated December 26, 1951.

We are again filing claim under our Banker's Blanket Bond and will make reimbursement as soon as this matter is processed by the bonding company.

Very truly yours,

JAMES W. MILLER
President

JWM:ed
bc: Toplis & Harding Inc.
R. A. E. Herbhold & Co., Inc.

Government's Exhibit 24

DORFF & LEVY
8 West 40th Street
New York 18, N. Y.

June 4, 1952.

Mr. E. F. Bartelt, Fiscal Assistant Secretary,
Treasury Department, Fiscal Service,
Washington, D. C.

Dear Sir:—

Our client, The Pennsylvania Exchange Bank of New York City has turned over to us its file regarding the cashing of certain U. S. Savings Bonds bearing the names of various members of the Nat Chernoff family at the total redemption value of $6684.50. We have read this file very carefully and we have also interviewed Mr. Miller, the president of the bank. We also note from the file that this matter has been reviewed by you. We are wondering whether or not all of the facts in the matter have been presented to you because, from the facts as we learned them, and applying Paragraph 4 of the Treasury Department circular of December 19, 1947 outlining the procedure for cashing E bonds, we find it difficult to deduct the basis of your claim for reimbursement.

We have been advised that a person came into the bank with a depositor of the bank, one Irving Mishel. This person signed the bonds in the presence of a teller of the bank and asked the teller to redeem the bonds. The teller asked for identification and Mr. Mishel, who was with that person, told the teller that Mr. Miller knew Mishel and that he was identifying the person as the payee named in the

Government's Exhibit 21

bonds. Mr. Mishel and the person with the bonds went over to Mr. Miller and the latter asked Mr. Mishel who the person was; Mr. Mishel introduced that person to Mr. Miller as Mr. Chernoff, the man in whose name the bonds were registered.

We want to bring to your attention at this time that in view of the fact that Mr. Mishel had been a depositor of the bank for upwards of four years and that his transactions up to that time had been satisfactory to the bank and that Mr. Miller accepted, and had a right to accept, the identification of the person who claimed he was Mr. Chernoff, that such identification satisfied completely the requirements laid down by the Treasury Department for the cashing of these bonds. It seems to us that no better identification could be made than having somebody who is well known to the Bank officer identify the person as the one named in the bonds. Such identification, in our opinion, is superior to identification based on automobile registration, license, creditcards and other methods of identification of the same type.

We therefore respectfully ask you to have the matter reconsidered and if you deem it advisable to investigate further, we would welcome same and cooperate with you to the fullest extent. Incidentally, Mr. Miller testified before the Grand Jury regarding the theft of these bonds and we have been informed that the person who cashed the bonds was subsequently indicted.

Anticipating your cooperation and hoping to hear from you as to what further action you deem necessary, we are

Very truly yours,

IAL:ftm

Testimony

(61) • • •

NAT CHERNOFF, called as a witness in behalf of the Government, having been first duly sworn, testified as follows:

Direct examination by Mr. Hallinan:

Q. Mr. Chernoff, what is your occupation? What business are you in? A. Manufacturer.

Q. Is that your own business? A. Yes, sir.

Q. And how long have you been in that particular business? A. Close to twenty years, sir.

Q. Under what name is it going now? A. Madest Underwear Company.

(62) Q. What is known by another name in 1946? A. No, sir.

Q. It was the same name in 1946? A. The same name.

Q. Sometime in May of 1946, were 59 United States Savings Bonds stolen from your business premises? A. Yes.

Q. Where was your business located at that time? A. 395 Stone Avenue, Brooklyn.

Q. What type of bonds were they? A. Registered bonds.

Q. And can you recall in whose names the bonds were registered? A. Yes, Nat and Blanche Chernoff, Marilyn Chernoff, David Chernoff, and Stephen Chernoff.

(63) Q. Now what relationship do David, Marilyn and Stephen Chernoff bear to you? A. My children.

Q. And in 1946, at the time these bonds were stolen, how old were those children, do you recall? A. Marilyn was ten years old. David was seven. And Stephen was two.

Mr. Hallinan: May we have these marked.

(Government's Exhibits 1 through 8 marked for identification.)

Q. Now, Mr. Chernoff, I show you Government's Exhibits 1 through 8 for identification and I ask you if these are photostatic copies of the 59 bonds that were stolen from you back in 1946? A. (After examining) Yes, sir.

Q. Now will you look on the backs of the various bonds and tell me whether or not the signature on the back is in your handwriting or in the handwriting of any member of your family? A. (After examining) None of those signatures on the back of those bonds are any of my family or my own.

Q. Have you ever had an account at the Pennsylvania (64) Exchange Bank in Manhattan? A. No, sir.

Q. Have you ever been in that bank? A. No, sir.

Mr. Hallinan: You may inquire.

Mr. Rosenblum: No questions, Mr. Chernoff. Thank you.

The Court: Thank you, Mr. Chernoff.

(Witness excused.)

EUGENE PAUL AREY, called as a witness on behalf of the Government, being duly sworn, testified as follows:

Direct examination by Mr. Hallinan:

Mr. Hallinan: Your Honor, I have a small problem. This witness is going to testify with respect to a diagram that he drew for me of the Pennsylvania Exchange Bank, and I have it resting on that (indicating), and it looks a little too large to fit into it. The problem is where to fit it so that we can——

The Court: Why don't you get it authenticated and then we will worry about where to put it.

Mr. Gallinan: I think I had better have it (65) marked first.

If your Honor please, I made a slight miscalculation of the order of my exhibits, and rather than confuse my list I would like to have this marked 12. There is a gap. But I don't think there will be any objection.

Mr. Rosenblum: No.

The Court: All right.

(Government's Exhibit 12 marked for identification.)

Q. Now, Mr. Arey, by whom are you employed? A. Federal Bureau of Investigation.

Q. In what capacity? A. I am an exhibits expert or specialist.

Q. How long have you been employed by the Federal Bureau of Investigation? A. 14½ years.

Q. And during that period of time have you always served in this capacity that you have just told us about? A. Yes, sir.

Q. Now would you tell the Court and jury, please, just give a brief description of what your duties require? A. Well, I prepare graphic presentations, such as (66) maps, charts, graphs, diagrams, anything that would prove to be a visual aid to a court trial or pretrial preparation.

Q. You have to keep your voice up. Now did there come a time when the United States Attorney for the Southern District of New York, through me, called upon you to draw a diagram of the Pennsylvania Exchange Bank at the 20 West 48th Street branch? A. Yes, sir.

Q. And when did you make that diagram, or when did you start working on it? A. August 23, this year.

Q. And what did you do on that day? A. I proceeded to the bank and took measurements myself of the main floor, complete measurements of the entire first floor.

Q. Did you work there on the following day, August 24th? A. Yes; I returned on the following day to take a few more measurements that we didn't have time for the first day.

Q. Did there come a time when, based upon your measurements and calculations, you did prepare a diagram (67) of that branch of the Pennsylvania Exchange Bank? A. Yes, I did.

Q. Now I show you Government's Exhibit 12 for identification and ask you if that is that diagram? A. Yes, sir, it is.

The Court: You shouldn't face it to the jury until you have gotten it in.

Mr. Hallinan: Well, at this particular time then I will offer this exhibit in evidence merely for demonstrative purposes.

Mr. Rosenblum: May I just take a look at it? I haven't seen it.

Mr. Hallinan: Certainly.

Mr. Rosenblum: May I ask a question of the witness?

The Court: Certainly.

By Mr. Rosenblum:

Q. Mr. Arey, this is just a floor plan, isn't it? A. Yes, sir.

Q. You haven't marked off any places where furniture would be? A. No, I only chartered stationary things; any desks, chairs, I didn't chart anything that could (68) be moved.

Q. Will you tell us whether or not there were chairs

on either side of this railing? You have a railing 3 feet 7 inches high. Of course you would only be able to tell us what you saw in 1956. You wouldn't know— A. That is true. I believe there were chairs, but nothing of that nature was chartered.

Mr. Rosenblum: Subject to checking as to accuracy, just in case an error had been made——

The Court: All right.

Mr. Hallinan: I don't know what that means, your Honor. He has to check through this witness as to accuracy.

The Court: Well, I will receive it.

Mr. Rosenblum: I will say I have no basis now to believe that there are any errors. I merely say if there should be any error, if it comes to my attention, I want an opportunity to bring——

The Court: Certainly. You are not precluding yourself. But we will receive this exhibit.

Mr. Rosenblum: That is right.

(Government's Exhibit 12 for identification received in evidence.)

(69) Q. Mr. Arey, starting with the entrance to the bank on that particular diagram, will you describe briefly for the Court and jury the areas that are represented in that diagram? A. Yes, sir.

Q. I think the best thing is for you to step to the right of the exhibit and point out the areas. A. The only entrance to the bank is here at West 48th Street (indicating). There are two sets of glass swinging doors. Proceeding to the right, as you enter over here (indicating), there is a glass counter for writing purposes, and that glass counter is 3 foot 6½ inches from the floor.

Proceeding father down on the right-hand side, we

have the tellers' cages, of which there are nine positions, there are nine sections (indicating). The highest point of the teller cage is 4 foot 2½ inches from the floor.

Proceeding on back, we have a partition extending across——

Q. Excuse me. Prior to proceeding, will you describe to the Court and jury what you observed when you made that diagram. When you say tellers' cages, what actually is there? (70) A. There is an outer ledge here (indicating) that is 3 feet 6½ inches, and then it is built up in the center section 8 additional inches (indicating). Then it drops off in back to a working area that each teller uses (indicating). These lines here (indicating) separate the different positions that they work at.

Q. Does it correspond to the jury ledge not in height, but the jury ledge that I am now indicating (indicating), or does it have cages above that level? A. No, the highest point is a flat area. If you wish to use this as an example, it would be an outer ledge off this side (indicating) with the tellers back here (indicating) and their work area as at a level down below with a section separating each position, but nothing above this level (indicating). That is the 4 feet 2½ inches.

The partition that runs across this section of the back (indicating) has windows in it. There is a window here (indicating) and a large window here (indicating) and a window there (indicating) or clear glass.

The Court: I think the record should be clear you are speaking now about the rear section.

The Witness: The rear section, yes.

There is glass all the way across, but the (71) rest of the glass is translucent; but the three sections in the lobby area of the bank are clear glass.

There is a low swinging door at this point (indicating) that is 3 feet 7 inches high, and then

coming back towards the front of the bank (indicating), there is a railing that extends from the partition all the way down to the main entrance with three open sections (indicating), walk-in areas (indicating) into an office area that extends from the partition to the front of the bank on the left-hand side of the building (indicating).

In back of the partition and to the right of the bank (indicating), there are three rest rooms, three toilet areas (indicating), and then back farther off that aisleway is a room used for storage (indicating).

To the left of that (indicating), and more or less in the center of the bank, is the vault room with the vault door facing the front of the bank.

Off the left of the vault, there are two small rooms that are completely enclosed. They are approximately 3 by 3½ feet in area. These two small rooms have a writing table.

Coming back into the main lobby, I overlooked this; there is a writing counter that surrounds a column that extends to the ceiling (indicating). This is a clear (72) glass writing counter, which is 3 feet 6½ inches high.

In back of the two small rooms off the vault, there is another storage area (indicating), and in the back left-hand corner of the bank, there is a large office (indicating).

There is a door that extends back into this (indicating). I believe there is a staircase, but I didn't chart that as I didn't go back in this area. The same with these two open areas here (indicating). There are staircases in here (indicating). I didn't go into those sections.

Q. Did you tell us how high the partition is separating the lobby from the space where the desks are or the other

space to the left of the lobby? A. The railing is 3 feet 7 inches high.

Q. And is it similiar to the railing where the tellers sit in that it is also above that? A. That is correct. It is 6 inches wide, very similar to the jurors' railing here (indicating). It is 6 inches; it extends the entire length from the partition to the front of the building, 3 feet 7 inches high.

Mr. Hallinan: Very well. You may inquire.
Mr. Rosenblum: No questions.

By the Court:

(73) Q. That partition in the back, where you said there was a swinging door 3 feet or so high. A. Yes.

Q. Does that partition go all the way to the ceiling? What is on top of the low swinging door, just an open space, or what? A. Your Honor, the partition itself extends to the ceiling from this point (indicating) to the extreme right of the building. All the way over to this dark mark right here (indicating). The small area, which is about 1 foot, right in there to the right of the swinging door (indicating), is the same height as the railing, 3 foot 7. The door itself is 3 foot 7, and it continues all the way around. The full wall partition picks up again to the left of the railing.

Q. Are there any full wall partitions in front of that except those that you have got marked with solid black lines? A. That is correct. Outside of the outer walls, this is the only full wall partition. Back in the rear of the bank, the solid lines represent walls to the ceiling.

Q. And the solid small lines in front of the bank, are they ceiling-height walls, these lines through here (74) (indicating)? A. Yes. To clarify one thing, this line

across the front of the building here (indicating), this is window display ledge for signs that can be read from the street area.

Cross-examination by Mr. Rosenblum:

Q. Mr. Arey, you said certain walls extend to the ceiling in the bank. Is the ceiling at the back the same height as the ceiling in front of the building? A. No, sir, it is not.

Q. So when you say extend to the ceiling, you mean in fact it extends to the ceiling which is the floor of the mezzanine, is that right? A. That is correct. There is an overhanging mezzanine that picks up approximately here (indicating).

Q. So that everything from that point on, where you said "here" would be underneath the mezzanine; and when you said the ceiling, you don't mean the entire height of the bank as indicated by the ceiling in front, but the ceiling which is really the floor of the mezzanine which is over it? A. That is correct.

Q. Is it an open mezzanine? A. An open mezzanine?

(74a) Q. That is, could you look up there? A. From the main lobby?

Q. Yes. A. Yes.

Mr. Rosenblum: That is all.

Mr. Hallinan: That is all.

(Witness excused.)

(75) IRVING MISHEL, called as a witness on behalf of the Government, being duly sworn, testified as follows:

Direct examination by Mr. Hallinan:

Q. Mr. Mishel, where are you presently residing? A. The Federal House of Detention.

Q. Is that on West Street, New York City? A. Yes, sir.

Q. Now have you ever been convicted of a crime? A. Yes, sir.

Q. In 1945 did you plead guilty to the charge of felonious assault? A. I did.

Mr. Rosenblum: May the witness not be led?

Mr. Hallinan: Oh, I will put a direct question to him.

The Court: All right.

Q. Will you tell the Court and jury, please, what other convictions you have, Mr. Mishel? A. In 1945 I was convicted for felonious assault.

Mr. Rosenblum: Keep your voice up, please, Mr. Mishel.

Q. I would like you to keep your voice up.

(76) The Court: Talk to the last juror over there.

A. In 1945 I was convicted of felonious assault, in the Bronx. I received six months' suspended sentence.

In 1953 I was convicted in New York County, Court of General Sessions, of forgery and grand larceny. I received 10 to 20 years.

Q. Are you presently serving that sentence? A. Yes, sir. At that time I also received five years from the

United States Government for transporting some stolen bonds in the western part of Virginia.

I also received a suspended sentence in 1955, I believe, Bronx County Court, for grand larceny.

Q. All right. Now you will have to continue to keep your voice up so that everyone can hear you.

Do you know a person by the name of Irving Mickey Rosenberg? A. I do.

Q. Do you know a person by the name of Frank Race? A. I do.

Q. When did you first meet Frank Pace? (77) A. Sometime in '49, I believe it was about September '49.

Q. Who was with you when you first met Mr. Pace? A. Irving Mickey Rosenberg.

Q. And what was the purpose of that particular meeting? A. About some bonds that Frank Pace had.

Q. What kind of bonds? A. Some stolen bonds that we were to negotiate.

Q. Now do you recall some time around that same period receiving from Frank Pace some stolen bonds? A. I do.

Q. Do you remember what type of bonds they were? A. Series E Bonds.

Q. Were they registered bonds? A. Yes, I believe they were registered in the name Nat Chernoff and his family, some other members of the Chernoff family.

Q. Now, was Mickey Rosenberg with you when you received those bonds? A. He was.

Mr. Hallinan: Will you mark that Exhibit 9, please.

(Government's Exhibit 9 marked for identification.)

(78) Q. I show you Government's Exhibit 9 for identification and ask you if you know the individual repre-

sented by that photograph? A. Yes. This is Mickey Irving Rosenberg.

Mr. Hallinan: The Government offers Government's Exhibit 9 (handing to Mr. Rosenblum).

No objection?

Mr. Rosenblum: If I have an objection I will say it.

The Court: (To Mr. Hallinan) Do you want it taped on both sides? The paper is loose on the back.

Mr. Hallinan: Oh yes. I didn't notice that. Thank you, Judge.

(Government's Exhibit 9 for identification received in evidence.)

Mr. Hallinan: I should like to circulate it among the jury, your Honor. It won't take long.

The Court: All right.

(Mr. Hallinan hands Government's Exhibit 9 to the jury.)

Q. Now, Mr. Mishel, I show you Government's Exhibits 1 through 8 for identification and I ask you if these are photostatic copies of the bonds that you received from—

(79) Mr. Rosenblum: May I object to any leading questions, just like the other one, "Was Rosenberg with you?" Let him ask the question and we will get the answers.

The Court: Yes.

Mr. Rosenblum: I object to any leading questions at this time of this witness.

The Court: Ask him if he has seen them before.

Q. I show you Government's Exhibits 1 through 8 for identification and ask you what they are? A. These are the Series E bonds that I received from Frank Pace.

Mr. Rosenblum: I can't hear the answer.
(Answer read.)

Q. Are these exhibits you have just identified, are these the exact bonds that you received? A. Yes, sir.

Q. Or are they photostatic copies of those bonds? A. Those are photostatic copies of the bonds.

Q. Now, Mr. Mishel, do you know the defendant James W. Miller? A. I do.

Q. Would you point him out for the Court and jury, (80) please? A. That is him over there (indicating).

Mr. Hallinan: May the record indicate that the witness has identified the defendant.

Q. When did you first meet the defendant? A. Sometime in 1946 or 1947.

Q. You have to keep your voice up. How did you happen to meet him? A. I was introduced to him by an attorney.

Q. What was that attorney's name? A. Irving M. Luria.

Q. And what was Mr. Miller's occupation at the time you met him? A. Mr. Miller was the president of the Pennsylvania Exchange Bank.

Q. Around the same time that you met Mr. Miller, did you meet any other official of the bank? A. I did.

Q. Who was that? A. Mr. Gallagher.

Q. What was his full name? A. William Gallagher.

Q. Now, some time after you met Mr. Miller and Mr. Gallagher, did you have occasion to be in Mr. (81) Gallagher's office? A. I was.

Q. And who was present with you at that time? A. Mr. Gallagher, Mr. Miller and myself.

Mr. Rosenblum: May I ask that the "some time" referred to in the question be expanded as to just what that means? Some time after, it may be a year.

The Court: Yes. The approximate date.

Q. Can you recall when that happened, Mr. Mishel? A. Sometime in 1947 or '48 this happened.

Q. Now, was there a conversation at that time? A. There was. There was.

Q. Will you tell us what that conversation was, please? A. Mr. Gallagher was talking to me and Mr. Miller walked into the room, so Mr. Gallagher said, "Jim, this Mishel here is with very good people and anything you do for him don't worry about it; do anything you want with him, whether it be legal, illegal or anything, go along with him, and if I am not here do it just as if I was here."

Q. Now, after this conversation did you open up certain accounts at the Pennsylvania Exchange Bank? (82) A. I did.

Q. Will you tell us what type of accounts those were? A. They were stiff accounts.

Q. Mr. Mishel, what is a stiff account? A. They were phony accounts in fictitious names. We were using them for our check-cashing business.

Q. What kind of check-cashing business? A. Well, we were cashing checks for bookmakers, hoodlums, wise guys, and all black marketeer people.

Q. Did you ever discuss with Mr. Miller the opening of these stiff accounts? A. I did.

Q. Do you recall when that was? A. I discussed it many times.

Q. Do you recall when the first time was? A. Some time '47 or '48, or maybe later.

Q. Do you recall the substance of the first conversation you had with him with respect to the opening of these stiff accounts? A. I recall part of the substance; I don't recall it all.

Q. What was the part that you recall? (83) A. Well, he said we could open the accounts if they wouldn't run too long, he said a month or two, and then close them out and open another one. So that was the conversation.

Mr. Rosenblum: We cannot hear the witness.

The Court: Try to speak louder.

The Witness: May I have a little water?

The Court: Surely.

The Witness: Thanks very much.

Mr. Rosenblum: May we, if your Honor please, have the date, the conversation date when this witness says this particular conversation took place?

Mr. Hallinan: I thought I asked that, your Honor. He placed it some time in 1948——

Mr. Rosenblum: May I suggest——

Mr. Hallinan: If you have any objection——

Mr. Rosenblum: I do.

Mr. Hallinan: —ask for the record to be read.

Mr. Rosenblum: I just asked may the witness now again state, if he stated it before, when the first conversation took place, or give the approximate date if he doesn't know the exact date.

(83a) The Court: I think if you read the next to the last answer we will have it.

Mr. Rosenblum: There may be something I didn't hear because his voice was so low.

(Record read.)

(84) Will you now give us the part, Mr. Mishel, that you do recall? A. I recall opening those accounts. Whether it be 1947, 1948, or 1949, I am not sure——

Q. I will——

Mr. Rosenblum: Go ahead, Mr. Mishel.

Mr. Hallinan: No, don't go ahead, Mr. Mishel.

Mr. Rosenblum: I object to the witness being cut off when he is making an answer to a question by Mr. Hallinan. I don't think the attorney has a right to cut his answer at any point he wants to.

The Court: Will you read the question and answer?

(Question and answer read.)

Mr. Hallinan: I am asking for the substance of the conversation.

The Court: Give us the parts of the conversation you remember.

The Witness: I remember Mr. Miller saying to me that we should open the accounts but they couldn't run too long as we were cashing checks in those accounts, and they ran maybe 150 or 200,000 per month, and that would look bad for the bank examiners. So he told me when I opened the accounts, open them at the beginning (85) of the alphabet and the ending of the alphabet so if the examiners do come in, all they would pick up would be one account, and I received from Mr. Miller these opening account cards. I opened the accounts——

Q. Do you recall anything else that was said at that time? A. Oh, yes. We agreed upon a price for opening them.

Q. What was that? A. $150 a month per account with the understanding that any time they asked us, we will close them and they will open up new ones, and when things get hot, as he put it, we may not be able to cash any checks through the bank.

Q. Did you thereafter open up various stiff accounts? A. I did.

Q. And pursuant to what you have just told us, did you from time to time pay Mr. Miller? A. I did.

Q. Will you tell the Court and jury how you would pay him? A. Well, I would send one of my messengers up to the bank to make some deposits of checks in these (86) stiff accounts, and at the same time I would say, "Here is some money," and I would put it in an envelope and seal it and say, "Give it to Mr. Miller."

Q. Do you recall who those messengers were? A. I used to send one boy in particular, Sam Siegel, who worked for me, and another boy by the name of Norton Schnabel.

Q. Was there anyone else? A. Sometimes I brought it up myself.

Q. Was there anyone else? A. Once in a while I would send Mickey Rosenberg up with money and deposits also.

Q. Can you recall the names of some of these stiff accounts? A. I could try—John Case, Sam Marco, Thomas Young, Abe Katz, John Whitman, Jack Feinman, Thomas Young, S. H. Newman. I don't recall any more.

Q. Will you tell us how the Thomas Young and John Case stiff accounts were opened? A. That was in my office at 577 Seventh Avenue, which I shared with some lawyer and Sidney Hack, who is a friend of mine and was partners with me at the time in Mishel Wine and Liquor Corporation, a store at 2960 Third Avenue in the Bronx. He was in the office and (87) I said to Sidney, "Sidney,

put on this card John Case," and I said, "Put on this one Thomas Young," which he did, and I gave him a book of blank checks of the Pennsylvania Exchange Bank, and I said, "Sign each one John Case and on the back of them endorse John Case," and I asked him to sign another book Thomas Young and endorse the book Thomas Young, those blank-checks, which he did.

Q. What else did Sidney Hack, if anything, put on the signature cards? A. Nothing at all.

Q. What did you do with the signature cards thereafter? A. I took those signature cards with some checks which we had for deposit from our check cashing business, which was on 38th Street, and I brought them up to the bank and I had one of the boys in the office, before I went to the bank, endorse Thomas Young on some of the checks and make out a duplicate deposit slip for it—that is, two of them, one after another, and the same thing in the name of John Case—and I brought them up to Mr. Miller and I said, "Open this account in John Case's name. Open this one in Thomas Young's name."

He said to me, "Give me some addresses."

(88) So I gave him the address on 38th Street of our cigar store and I gave him the address on Seventh Avenue of a place we were using to book horses; 515 Seventh Avenue I believe is the address.

Q. Did Mr. Miller know that these two were stiff accounts? A. Yes.

Mr. Rosenblum: I object to the form of the question.

The Court: Objection sustained.

Mr. Rosenblum: May the answer be stricken?

The Court: Yes.

Q. Did you say anything else to Miller with respect to these two signature cards and the accounts? A. I did. I said to him, "Here are two stiff accounts to be opened. They will be opened in a few weeks." And he opened them.

Q. What condition were the signature cards in when you handed them to Mr. Miller? A. Signature cards were just with John Case's signature on it and Thomas Young's signature on it, nothing else.

(Government's Exhibits 10 and 11 marked for identification.)

(89) Q. I show you Government's Exhibits 10 and 11 for identification, and I ask you what they are (handing). A. These are the individual signature cards that I had Sidney Hack sign Thomas Young on this one (indicating), and this is the one that he signed John Case on, this one (indicating).

Q. Except for that, you said they were in blank when you handed them to Mr. Miller? A. Yes.

Mr. Hallinan: The Government will offer Government's Exhibits 10 and 11 in evidence.

Mr. Rosenblum: There were initials on the back of these, and I just felt that it should not be on there and Mr. Hallinan agrees.

Mr. Hallinan: May the record indicate that that is what I am now erasing from Government's Exhibits 10 and 11.

(Government's Exhibits 10 and 11 for identification received in evidence.)

Mr. Hallinan: May I pass these among the jury, your Honor?

The Court: Yes.

(Government's Exhibits 10 and 11 were shown to the jury.)

(90) Q. Mr. Mishel, when you received from Frank Pace Government's Exhibits 1 through 8 for identification, what did you do with them? A. I took them to the bank. I showed them to Mr. Miller and asked him if he could cash them.

Q. Will you keep your voice up? A. I took them to the bank. I showed them to Mr. Miller, and I asked him if he could cash them. He looked at them and he says, "Yes." He says, "I can cash them. Have somebody sign them." I said, "Fine, I will bring them back tomorrow signed."

Q. What did you do thereafter with the bonds? A. Thereafter I called Mickey Rosenberg on the phone and I said to Mickey, "Meet me in the morning. I have some bonds I want you to sign for me." Mickey said, "O. K." and he met me the next morning.

Mr. Rosenblum: May I request that the date be fixed of the two occurrences he has just described? He is talking to Mr. Miller on one day and then talking to Mr. Rosenberg the next.

The Court: Fix the date if you can.

Q. Do you recall the date when you first talked with Mr. Miller about the bonds?

I show you——

(91) Mr. Rosenblum: I didn't hear the answer.

Mr. Hallinan: It is quite obvious he has not made an answer. I am going to refresh his recollection.

The Court: Read the question.

(Question read.)

The Witness: About which bonds?

Q. The Chernoff bonds. Do you recall? A. Yes.

Q. What was the date? A. Sometime in December of 1949.

Q. Do you recall the exact date? A. It is seven years ago.

Q. I show you Government's Exhibit 1 for identification and ask you to look at that and tell me whether that refreshes your recollection as to the exact date (handing). A. I recall from this the date of the cashing of it. I don't recall——

Q. What was that date?

Mr. Rosenblum: I think the witness was about to answer.

Mr. Hallinan: He wasn't cut off, Mr. Rosenblum.

Mr. Rosenblum: I think he was.

(92) The Court: Read the answer, and if you want to add to it, you may add to it.

(Answer read.)

The Witness: I don't recall whether it was the day before that I spoke to Mr. Miller or a week before, but I know I spoke to him before that, and I brought them in to be cashed, and at that time, when I showed him the bonds, he gave me some redemption forms, white certificates they are, identification or redemption forms. Then I spoke to Mickey Rosenberg, and I told him to come down to the office in the morning. He says, "Pick me up."

I says, "Fine."

Q. Just one moment, I am interrupting you. The redemption forms you referred to, what form did they come in, if you recall? A. They were a pad, a white pad about this width (indicating), and one side of it like mucilage, like that white pad over there (indicating).

Q. Like the binding on that? A. Not on the book, the other binding over there (indicating), or on the yellow pad over there (indicating).

(93) Q. Now do you recall when you spoke with Mr. Rosenberg? A. Yes, I do. I spoke to him the night before the cashing of these.

Q. So that would be the 28th, would it? A. The 28th, to the best of my recollection; it could have been the day before, but around that time.

Q. Now, I asked you what you had done with the bonds after you had shown them to Mr. Miller and you were relating what happened there and I think you were as far as calling Rosenberg. A. Yes, sir.

Q. Would you continue from there, please. A. I called Rosenberg and I told him, "Listen, Mickey, meet me and I have some bonds for you to sign."

Mickey said, "All right, I will meet you."

So I picked him up 8.15 or 8.30 in front of the Concourse Plaza Hotel, in the Bronx, which was right next door to where I lived.

We went down to my office at 570 Seventh Avenue, New York City. We went in the office and Mickey signed all those bonds in the name of Nat Chernoff, and he signed about a half a dozen of these (94) white redemption forms in the name of Nat Chernoff.

Q. What did you do then with the bonds? A. I then took the bonds, put them in one of those legal type red envelopes we had in the office, and I said to Mickey, "You wait here, I will be back in a little while. I got to go over to Miller."

And I went over to the bank. And I gave the bonds and the redemption forms to Mr. Miller. I says, "Here's the bonds to be cashed."

He looked at them. He says, "They are not properly endorsed. The signatures are not right. They are not signed on the right line."

So I says, "Wait a minute, I will get Mickey and I will have him resign them."

So I leaned across the desk and called my office and I spoke to Mickey. I says, "Come on over to the bank, you signed them wrong."

So he came over to the bank. And I took the bonds from Mr. Miller and I walked towards the back of the bank. There is like a vault, and next to the vault there is two private cubbyholes; one has a telephone and one where you would examine your property if you took it from the vault.

(95) He sat down and started to sign the bonds properly, see, because some of them were not in the name of Nat Chernoff, they were in the name of, I believe, Blanche Chernoff or David Chernoff. So he signed them, he resigned them David Nat Chernoff.

With that, they still weren't signed all properly. And Mr. Miller passed, he leaned over Rosenberg's shoulder, I was half out of the booth. He says, "Don't sign here, sign it here." He says, "And don't sign the redemption form here, sign here."

He then signed them in the proper place with the proper name.

Q. What happened thereafter? A. Thereafter I said to Mickey, "Go back, I will meet you on 38th Street," which we had a check-cashing place.

I took the bonds, put them back in this portfolio and went back to Mr. Miller's desk and gave Mr. Miller the bonds.

Mr. Rosenblum: May we get the date, Mr. Hallinan, of what he has just been testifying to?

The Witness: This date is December twenty, whatever it is on those things, 29th, I believe, 1949.

Q. Would you continue, please? (96) A. He then looked at the bonds, looked at the redemption forms, and

said, "They are all right, I will cash them." He says, "Come back a little while they will be cashed for you."

So I left him all the bonds, redemption forms, and this lawyer's envelope, and I went about my business. I don't recall whether I went for some coffee or not. I came back about a half hour or an hour later.

Q. What happened then? A. He took out $840 and he says, "Here."

I says, "Gee, that isn't what was for the bonds."

He says, "Well, I only cashed one bond," he says, "a thousand-dollar one."

Well, I says, "What about the rest of them?"

He says, "Look," he says, "I have to cash them piecemeal, you can't cash them all at once."

So I said, "Okay."

He says, "Well, take the bonds," he says, "and every couple of days when you come in I will cash them for you."

I says, "Look, it's too much bother for me to carry them around, I trust you, hold on to them."

(97) So I left the bonds and redemption forms and he took them and put them in his drawer.

Q. You have said that Mickey Rosenberg was in the bank on this particular day. To your knowledge did Mr. Miller know Mickey Rosenberg as——

Mr. Rosenblum: I object to that, if your Honor please.

Mr. Hallinan: I don't know how else to ask it.

Mr. Rosenblum: All right, go ahead. I will withdraw my objection.

Q. Did Mr. Miller, the defendant, know Irving Mickey Rosenberg as Irving Mickey Rosenberg? A. He did.

Q. How did he know that? A. Well, many a time I tell him, I sent Mickey up with some checks to be cashed or other work or deposits, and I introduced him, many a

time, Mickey used to be with me quite often when I went in the bank.

Q. Now will you continue telling us what happened with the—you returned some time after Miller told you to return to the bank? A. Yes.

(98) Q. And he had some money. What happened after that? A. Well, he gave me $840. And I said to him, "Well, is this all?"

He says, "Well, this is all for the present."

So I said, "What do I owe you?"

He said, "Well, being a friend of yours whatever you think is fair."

I said, "10 per cent do you?"

He says, "Fair enough."

So I took from the 840 $200 and said, "All right, here, Jim, you take that and as I cash them you will get the same 10 per cent."

Thereafter, I used to be in the bank once in a while, I would stay around for a couple of minutes, there is some bonds being cashed, so I would sit around. Over would come some money. I would give him the money. I would go across the street in the Holland, I think it is Holland House, I am not sure of the name, but something like that, and I straightened out if I had to give him some money there also.

Q. Do you recall over what period of time approximately these bonds were cashed at the bank? A. I believe it was over about six or eight (99) weeks, I am not sure, but I know it was in six, seven, eight, maybe nine transactions. It was piecemeal. If I could see the bonds again I could tell you exactly when they were cashed.

Mr. Rosenblum: May we find out from the witness whether he has any recollection? If he is going to look at a date on a piece of paper, it is not his recol-

lection, I don't think it is good testimony, unless he had a prior recollection which could be refreshed by something. If he has no recollection at all, I think under the rule——

Mr. Hallinan: He just testified that it was approximately seven, eight or nine weeks, I think were his exact words, and he said, "If I could see the bonds I could tell you."

The Court: I will let him look at them. Go ahead.

Mr. Rosenblum: Exception.

May I inquire and see if we can get his recollection?

Mr. Hallinan: No, I don't——

Mr. Rosenblum: Wait a minute. I have a suggestion to make.

May we first ask him as to each one of the (100) bonds if he has any recollection as to each one, and then if he says he has no recollection——

Mr. Hallinan: No. Mr. Rosenblum evidently misunderstood my question. And I don't want to have questions put for me. I am only asking him now if he recalls the period of time over which these bonds were cashed, period.

Mr. Rosenblum: He has already testified to that.

The Court: That is right. And he volunteered that if you were to give him the bonds he will tell you the exact date.

Mr. Hallinan: That is right.

The Court: And Mr. Rosenblum wants you to ask him whether he remembers the exact date. You say you don't want that information.

Mr. Hallinan: Oh no. That isn't the information I didn't want. I will put the question.

Q. Do you remember the exact period of time, the first date and the last date, during which the bonds were cashed? A. I believe it was from December 29, 1950 to the first week in February— I have to withdraw that. It was December 29, 1949 to the first week in February (101) 1950. I believe that was the period of time. But I still would like to see those if you want the exact time.

The Court: Now if you want to show them to him and get the exact date, go ahead.

Mr. Hallinan: Yes, I do, because Mr. Rosenberg has been very concerned with dates.

The Court: Let us just go ahead with the case. You and Mr. Rosenblum——

Mr. Rosenblum: I am not getting concerned.

The Court: —can talk about what you each want at some other time.

Q. Just give us the last date, the inclusive dates during which they were passed. A. February 28 was the last date, 1950, and the first date——

Q. February 28? A. Yes. And the first date was December 29, 1949.

Q. Is that February 20 or 28? A. It looks like 28. It could be 20. It could be the 20th or the 28th; I am not sure. This is seven years ago.

(102) Q. Now can you recall during that period of time a conversation that the defendant Miller had with the guard Peter Kennedy with respect to a teller by the name of Frank Horan? A. I do.

Q. First of all, do you recall what——

Mr. Rosenblum: Let us see if we can't keep leading questions out. If he had a conversation with some other person may we get it from the witness and not have Mr. Hallinan ask whether he

had a conversation with a particular person. If he doesn't know, then he might suggest it to him. I think he should first find out whether he knows of his own independent knowledge and recollection whether he had a conversation with somebody and find out.

Mr. Hallinan: Mr. Rosenblum knows I can't ask the witness if he had a conversation, period.

The Court: He would like you to ask did he have a conversation with a guard, and then get the subject matter.

Mr. Rosenblum: Or with any other person. And then, if he says yes or no, ask him, instead of leading.

The Court: I think we can go ahead on the (103) question that is already put. I think we may as well proceed that way.

Mr. Hallinan: All right.

Q. Do you recall the question, Mr. Mishel? A. Yes.

Q. All right. Can you answer it, please? A. During cashing one set of these Chernoff bonds I was sitting at Mr. Miller's desk when he called Pete Kennedy over and he said, "Pete, give these to the teller to be cashed."

Pete took them over to one of the tellers, Mr. Horan.

Mr. Rosenblum: May we have the date, if your Honor please? He says during the time when one of these sets were cashed. May we have that date?

Q. Mr. Mishel, can you recall the exact date? A. If you show me the sets of bonds that Horan cashed I will recall the exact date for you.

Mr. Rosenblum: I have asked a simple question. He is now giving testimony as to an occurrence.

I think it is proper that the witness be asked whether or not he can give us that date of the conversation he has just referred to.

Mr. Hallinan: I just asked that question.

(104) Q. Can you give us the exact date on which that occurred? A. It was on one of the times that these bonds were cashed.

Q. Can you give us the exact date? A. I can't give you the exact date, but it was on one of the times one set of these eight, nine or ten sets of bonds were cashed.

Q. Will you tell us what was said at that particular time; what happened? A. At that time Mr. Miller pressed a button on his desk and a light lit up, and Mr. Kennedy came over. Mr. Kennedy was the bank guard.

He says, "Pete, take these over to the teller and have them cashed."

I was sitting at Mr. Miller's desk when this took place.

About two or three minutes later Kennedy come back and said that Horan doesn't want to cash these bonds, there is no identification with them.

So he said, "You tell Horan to cash the bonds anyway, that I said to cash them."

Back went the bonds with Pete Kennedy, and back they came again.

(105) And Mr. Kennedy said, "Horan still says he doesn't want to cash these bonds unless he gets some identification." Meaning, I presume——

Q. No, never mind what he meant. Just tell us what happened. A. Yes, sir. So, then, Mr. Miller said, "You tell Frank Horan that I said either he cash those bonds or go in the back and get his hat and coat and go home. I am still the boss here."

Back went the bonds. They were cashed.
Q. All right. A. That is it.

Mr. Rosenblum: I think it is still unfinished. At least we can see the mouth move but we don't know what he said.

The Witness: It isn't the mouth. I have a sore throat.

The Court: He just wants to know whether you completed your answer.

The Witness: Yes.

The Court: Then we will take a brief recess.

The Witness: Yes.

The Court: We will take a five-minute recess.

(Short recess.)

(106) (Government's Exhibits 1a, 2a, 3a, 4a, 5a, 6a, 7a, and 8a marked for identification.)

By Mr. Hallinan:

Q. Mr. Mishel, I show you Government's Exhibits 1a through 8a, for identification and ask you what they are (handing). A. These are the identification forms on the redemption of the Chernoff bonds.

Q. Are these the ones that you testified——

Mr. Rosenblum: I object to the form. It looks like we are going to have a leading question.

Q. What happened to these after they were made out, Mr. Mishel? A. They were taken by Mr. Miller with the bonds, and he used one of them with the cashing of each series of the bonds.

Mr. Hallinan: The Government offers exhibits 1 through 8 and Exhibits 1a through 8a for identification in evidence.

Mr. Rosenblum: If you want to continue with the questioning, to save time I will look at them while you are asking the questions.

Mr. Hallinan: No, the next questions are on these exhibits, Mr. Rosenblum. I will wait.

(107) Mr. Rosenblum: Here you are, Mr. Hallinan (handing).

Mr. Hallinan: There is no objection on behalf of the defendant to the introduction of these.

(Government's Exhibits 1 through 8 for identification and 1a through 8a for identification received in evidence.)

Q. Now, Mr. Mishel, will you please look at Government's Exhibits 1 through 8 in evidence and show us on the backs thereof where Mickey Rosenberg first signed those bonds in your office (handing). A. He signed them on the top line, Nat Chernoff (indicating).

Q. What is printed just below that on the bond itself, just below where that signature appears? A. It is hard to make it out. It says, "I do not hold United States States Savings Bonds of Series E of any denomination originally issued to me during the calendar year in which this bond is issued."

Q. Now read what is printed just above that where the first signature appears. A. "I am the owner of the savings bond and hereby make request for the payment thereof."

Q. Where were the second group of signatures (108) put on those bonds? A. Right on top of "signature of registered owner or other person entitled"—it is very hard to read these—"signature of registered owner or other persons entitled to payment: Signed above"—I just can't make the rest of it.

Colloquy of Counsel

Mr. Hallinan: Before proceeding, I should like to circulate these bonds among the jurors. I think we might dispose of that this afternoon.

The Court: All right.

What is the significance of the particular exhibit groupings? Has that been developed?

Mr. Hallinan: No. It just has to do with the particular dates on which they were cashed. They were cashed in eight separate transactions.

Mr. Rosenblum: I would still like to get the witness' version.

The Court: On the face of the bonds themselves, do they show a cashed stamp of a particular date?

Mr. Hallinan: Yes (indicating).

The Court: In other words, you grouped them yourself according to the dates on those bonds.

Mr. Hallinan: Yes.

The Court: All right.

(109) (Government's Exhibits 1 through 8 were handed to the jury.)

The Court: Don't feel you have to hurry on the examination of these. Look at them and see what you want to see. It is just as important to look at the exhibits as it is to listen to the testimony.

Juror No. 3: We will have another opportunity to look at them, won't we?

The Court: The thing to do is look at them when they go by, and if you need further opportunity to look at it, then you will get it. But, by and large, just look at them.

Juror No. 7: Aren't we supposed to also look for the correction that was made on here?

The Court: In the summation of counsel, they will tell you what particularly to look for, but now

at least get as good an idea of the documents as you can so you can follow the testimony with respect to them. And, incidentally, these photostats are not the clearest job that I have seen and you will have certain difficulties as a result of it.

I assume there is nothing in the body of the bonds themselves which you need to read. If there is, counsel will point it out. Otherwise, look at the (110) material that is used to fill in the blanks on both sides of the document.

Juror No. 7: They seem to be all alike.

The Court: I wouldn't comment on them if I were you. Just look at each one as it comes to you.

(The jurors examined Government's Exhibits 1 through 8.)

The Court: Mr. Hallinan, I think tomorrow morning you should call to the attention of the jury, without any arguments or conclusions, the groups by date of cashing, the names of the beneficiaries of the bonds, and show them the signatures that the testimony has referred to, and I think that will make it easier for everybody.

Mr. Hallinan: I think you are right, your Honor.

The Court: Because the text of the bond is of no significance at all here unless there is something you want to call their attention to. I think that is probably the better way to do it. So if we can get the bonds back in one pile, we will have a short review of them tomorrow morning, and you will be able to look at them to your heart's content at some time.

But it is important even to go through a (110a) pile of papers if you don't read them to at least

see where the signatures are and what the form of the documents is.

Then we will resume at 10:30 tomorrow morning. Don't discuss the case with anybody, including the other members of the jury.

(Adjourned to October 19, 1956, at 10:30 a. m.)

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(111)

New York, October 19, 1956;
10.30 o'clock a. m.

Trial resumed.

(The following proceedings were held in open court in the absence of the jury.)

Mr. Hallinan: Your Honor, before the jury is brought in I have two matters I wish to bring up just briefly.

I think there is one correction, first of all, that has to be made in the transcript of this testimony on page 98. About in the middle: "So I took from the $840 the 200." And he testified 100, as is brought out by the rest of the statement. And it appears in here as 200.

The Court: How do you feel, Mr. Rosenblum?

Mr. Rosenblum: I don't recall. Let the witness change that if he wishes to. I don't recall, frankly, his voice was so low at times.

Mr. Hallinan: I don't want to be in the situation of having the witness correct the testimony if it was a mistake of the stenographer, and I (112) distinctly recall that he said a hundred dollars and he said "You get the same 10 per cent."

The Court: I remember the 10 per cent.

Colloquy of Counsel

Mr. Rosenblum: Yes.

The Court: I sort of had calculated it myself or recall $84. Probably it was my own jumping to a conclusion. If it should be a hundred dollars and everybody consents we can make it a hundred.

Mr. Rosenblum: I don't know.

Mr. Hallinan: May the record be checked?

(Notes read as transcript reads.)

The Court: Well, we can ask him again.

Mr. Rosenblum: That is right. I think he should be asked.

Mr. Hallinan: The second matter which is pertaining to procedure, and Mr. Rosenblum pointed out this morning and I will very gladly go along with it, your Honor suggested last night, and I thought it is what I should have done originally, really to be able to make it quicker and clearer to the jury, certain things on the bonds, and Mr. Rosenblum has pointed out, and it is true, that certain notations were made on the bonds after they left the hands of (113) Mr. Michel and Mr. Miller by the teller. So I think we should suspend any review of the bonds with the jury until the three tellers have testified, and at that point we will have all of the notations on each bond and each redemption form identified.

The Court: All right. Very good. You are going to call them out of order or are you going ahead?

Mr. Hallinan: No, we will go in the regular order because they have other testimony to give, too, and I won't want to——

The Court: All right. Well, the witness on the stand is not going to testify any more about these documents?

Mr. Hallinan: Yes, to certain notations that he is familiar with, but that is all.

Mr. Rosenblum: My point was, we have a photostat and there is no proof as to whether it is a correct one or it is not a correct one.

Mr. Hallinan: Yes, there is.

Mr. Rosenblum: Wait a minute. The way the question was put and the answer, as I read in the record, indicates that Mishel is saying these bonds that I am now identifying are the bonds in the (114) condition and the shape they were in when I last saw them. It is quite obvious that he didn't mean that. But I still think that if they need additional proof I feel that it ought to be in the record. I pointed out to Mr. Hallinan, on reading the record, I got the distinct impression, not in so many words, but I think Mr. Hallinan is in effect relying upon his testimony to establish that this is a photostat and a copy of the document he had.

(115) The document he had would have to be in the shape it was in for him to testify, if he can say so now, that all those items which appear on there were on there at the time he last saw them.

Mr. Hallinan: That is not quite true. He can testify that these are photostatic copies of the bonds and any further notations I will have identified by the tellers when they take the stand.

Mr. Rosenblum: He has testified up to this moment—it seems as though you are relying on his testimony at this moment to establish——

Mr. Hallinan: I am relying on the testimony of Chernoff and Mishel to establish that these are photostatic copies of the bonds, first of all, that Mr. Chernoff had and that were stolen from him; and, secondly, photostatic copies of the bonds Mishel received. Any further notations that appear there-

on I will have the tellers identify. But basically the document absent those further notations, yes, I rely on.

Mr. Rosenblum: Without those notations, I agree.

Mr. Hallinan: If Mr. Rosenblum has any thought that he is going to make a point over whether or not these are the photostatic copies, I will make available (116) to him, if he requests, the original reels, and I will put on further testimony to show that the original bonds are maintained by the Federal Reserve Bank for six months. Then they are destroyed and Recordaks are made. Your Honor is familiar with Title 28, Section 1732, that makes the Recordak the original thereafter when original business records are destroyed. The Recordak becomes the original. I will make those reels available for Mr. Rosenblum's inspection if he wishes.

Mr. Rosenblum: I don't know that that is the way to do it——

Mr. Hallinan: Yes, it is under the statute.

Mr. Rosenblum: This is a criminal case and you have the responsibility of establishing——

Mr. Hallinan: I realize that.

Mr. Rosenblum: I know you do. I have a duty, too. If you had made these reels available to me before the trial, maybe I would know what I should do.

Mr. Hallinan: They were available before trial.

The Court: Let him finish.

Mr. Rosenblum: We are at a point now where, and I think it is the fact, if you should by some chance not be able to produce certain evidence, I have a right to have that advantage. I am not

going to stipulate in (117) advance, say, at this moment, unless I know exactly what I am stipulating.

The Court: I am not asking you to stipulate anything. You may challenge the accuracy of the photostats as you see fit, but I believe that we have sufficient to go ahead without going into the reels ourselves. The reels should be made available if you want to check them. Whatever further efforts you want to make to probe the accuracy of these photostats, you should be able to do, and reserve any rights in that regard. But I won't require Mr. Hallinan to produce those reels in court before the jury. I think that the two witnesses have said these were photostats of the bonds they dealt with. That is enough for us to go ahead until the issue is presented further. So we will go ahead on that score.

I really think the better way to proceed, Mr. Hallinan, is for you this morning to call the jury's attention to the entries on the bonds while the witness is here on the stand, and if any question comes up as to what was on and what was not on, he is here to explain it; whereas if you wait until he gets off the stand and you have the tellers on, then we may be in a position where at some future time you are going to have to get into an argument as to what happened and what did not.

(118) You can call the tellers out of order if you want to, but I don't see that that is necessary.

We will go ahead. You take the bonds and explain to the jury each set of bonds and the entries on it, and I think you can tell them that as to any particular little notations on there other than the things which have already been testified to, at the

moment you are not commenting on them, they will be commented on as subsequent testimony develops to lay a basis for it.

Mr. Rosenblum: Do I understand that based on the record up to this moment, even in the light of what I brought to your Honor's attention, you are now ruling that these bonds are properly in evidence and accepted by your Honor to go into evidence on the record as now made?

The Court: Yes.

Mr. Rosenblum: I respectfully except.

The Court: In other words, you are now asking to have the bonds stricken from the evidence?

Mr. Rosenblum: It must follow, so I must ask that.

The Court: What is the basis for your motion?

Mr. Rosenblum: I don't think there is any proof (119) of the photostat being an accurate photostat of the original document other than what you have heard, and I don't think that is sufficient based upon the record as it stands at this moment.

As I pointed out before, it struck me that what the witness was testifying to is that he is identifying the document in the shape it is in now as being the document that he previously held in his hands or used.

The Court: Neither of them specified in the shape it is now. They both said these are photostatic copies of the bonds. I think we can develop what was included on it and what was not.

In view of the fact that they have already been received and already been before the jury, I won't strike them at this time.

Mr. Rosenblum: I respectfully except.

The Court: All right, bring the jury in.

(Jury in box.)

The Court: I guess we will go ahead now with the examination of the bonds.

Mr. Hallinan: Yes, sir.

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(120) IRVING MISHEL resumed.

Direct examination (continued) by Mr. Hallinan:

Q. Mr. Mishel, yesterday you testified that you gave Government's Exhibits 1 through 8 in evidence to Mr. Miller on December 29, 1949. Now, I ask you to look carefully at these bonds and tell the Court and jury what notations were on these bonds when you handed them to Mr. Miller (handing). That includes both the face and the back of the bonds. Do you understand the question? A. No, sir.

Q. I am simply ask you, apart from the printed matter on the bonds that the bond would come in, in its original form when purchased. Do you understand that? A. Yes.

Q. Apart from the printed matter on the bonds, what was noted or written on the bonds at the time you gave them to Mr. Miller? A. On December 28th?

Q. On December 29th. A. On each and every bond the name Nat Chernoff appeared, only Nat Chernoff, nothing else.

The Court: Mr. Hallinan's question is not just what was put on there in handwriting. Is that (121) what you are talking about?

The Witness: Yes.

The Court: No, Mr. Hallinan I think wants to know what blanks were filled in on the bonds, if you know.

Is that right?

Irving Mishel—for Government—By the Court

Mr. Hallinan: Yes, what blanks had been filled in——

The Court: Not only by you, but by anybody so far as you recall. In other words, was the name of the person to whom the bond had been issued typed in at that time?

The Witness: On the top, where it says here "David-Nat Chernoff," only the name Nat Chernoff appeared on each and every bond, just Nat Chernoff.

The Court: Let me have the exhibit.

(The documents were handed to the Court.)

By the Court:

Q. Will you look at the bond that is marked Government's Exhibit 1 (indicating). Now, you will see up here (indicating) the name Nat Chernoff typed in and an address, 440 Hinsdale Street, Brooklyn, New York, and down here (indicating) Mrs. Blanche Chernoff. Was that on there when you brought the bond? (122) A. Yes, the face of the bond was just the way it is here.

Q. Now, there are certain stamps that have been put on there. This one over here (indicating) looks like "Paid, Federal Reserve Bank of New York." Was that on there? A. No, sir.

Q. Here is another one that looks like a stamp that had been put on there, "Pennsylvania Exchange Bank, New York City," and it says, "Paid $840." Was that on there? A. No, sir.

Q. That was put on after you gave him the bond? A. That is right. All that was put on these bonds was the name Nat Chernoff.

Q. That is on the back? A. On the back.

Q. That is where it had been written in handwriting? A. Yes, it was written in handwriting.

Irving Mishel—for Government—By the Court

Q. And this notation, "O. K. 6/5/52", that wasn't there? A. Nothing there, and then it had to be rewritten here (indicating) because it was the wrong line, and the (123) right name had to be put on it.

Q. This typing up here (indicating), which says "Issued September, 1942," that was on there? A. That was on there. I think if you take another one, it will be easier to read.

Q. Was that substantially true of all the bonds? In other words, the person in whose name the bonds were issued had been filled out and the date of issue had been filled out in typing? A. Yes, sir.

Q. And the name Nat Chernoff had been put on the back in handwriting? A. On the top line where it said "Print," Nat Chernoff, and then it had to be rewritten Nat Chernoff or Blanche Chernoff or David Chernoff, or what the proper name on the front was. That was done afterwards.

Q. And the stamps here relating to payment by the Federal Reserve Bank or by the Pennsylvania Exchange Bank (indicating) were not on it? A. That is right.

The Court: Now, all right, will you show the jury the bonds and call their attention to the appropriate notations?

Mr. Hallinan: May I suspend that, your Honor, (124) until I have the tellers identify them? I think it would be better to do it that way. Then I can point out everything on the bonds.

The Court: All right. You have all seen them in a general way, and when we have all the notations explained, we will go ahead then with the bonds further.

By Mr. Hallinan:

Q. I show you Government's Exhibit 1a in evidence, Mr. Mishel, which is entitled Redemption Form, and I ask you what was on that Redemption Form when you gave it to Mr. Miller (handing). A. The signature Nat Chernoff was on it, nothing else.

Mr. Rosenblum: May we get the time fixed, your Honor, as to when?

Mr. Hallinan: Yes, that has been testified to. I don't wish to go over the whole matter again.

The Court: Go ahead.

Mr. Rosenblum: I don't think it was testified to as to each one, because he is not taking them——

The Court: He says he gave them to him, a group of them made out in blank, and that Mr. Miller used one each time he cashed a batch of bonds.

Let us go on.

(125) Q. I show you Government's Exhibit 2-A in evidence and ask you what was on that redemption form when you gave it to Mr. Miller? A. Just the signature Nat Chernoff, nothing else.

Q. And that is above the printed notation "Write signature"? A. Yes.

Q. And that is also true of Government's Exhibit 1-A, is it not? A. That is true.

Q. I show you 3-A and ask you what was on that when you handed it to Mr. Miller? A. This one was handed to Mr. Miller twice. Originally "Nat Chernoff" where it says "Print name" was written "Nat Chernoff." He told me, "You have to write out the name on the proper line."

So Mickey Rosenberg rewrote the name "Nat Chernoff" on the proper line.

Q. And what you are saying is the proper line is above what is on the redemption form? A. Where it says "Write signature."

Q. I show you Government's Exhibit 4-A in evidence and ask you the same question with respect (126) to that? A. That is exactly the same as the last one.

Q. As Government's Exhibit 3-A? A. Yes, sir.

Q. I show you 5-A and ask you what was on that when you handed it to Mr. Miller? A. When I handed this to Mr. Miller the name "Nat Chernoff" was on it and where it says "Identification" "Thomas Young."

Q. And the same question with respect to 6-A? A. When I handed this one to Mr. Miller the name "Nat Chernoff" was on the first line. It had to be rewritten on the second line and the name "Thomas Young" where it says "Identification."

Q. And Government's Exhibit 7-A in evidence? A. This one is in the name of "Blanche Chernoff." I gave it to Mr. Miller in the name of "Blanche Chernoff."

Q. And Government's Exhibit 8-A? A. This one is in the name of David Chernoff and it had on it "Thomas Young" when I gave it to Mr. Miller.

Q. Now I show you again Government's Exhibit 5-A in evidence, and I ask you, first of all, who wrote or who printed the name 'Thomas Young" on that (127) redemption form? A. Irving Mickey Rosenberg.

Q. Will you tell us if you can recall, to the best of your recollection, when Mickey Rosenberg wrote or printed "Thomas Young" on that redemption form? A. At the time I received a blank pair of these redemption forms Mickey wrote the name "Nat Chernoff" on about a half a dozen of them in the improper line. Then I had him sign some more on the proper line and some singly "Nat Chernoff" where it says "Write"—w-r-i-t-e—"signature" on this line.

At that time I was speaking with Mr. Miller, and he says, "You know, somebody will have to stand as identification."

I says, "Okay, who do you want?"

He says, "Use one of your stiff accounts."

I says, "Which one, Thomas Young, John Case, Sam Marco?"

He says, "Thomas Young will do."

So I told Mickey to print in the name "Thomas Young" and he did on I think three or four of them.

Q. I show you Government's Exhibit 6-A in (128) evidence and I ask you the same questions with respect to that with regard to Thomas Young. A. Mickey Rosenberg printed the name "Thomas Young."

Mr. Rosenblum: What exhibit number?

Mr. Hallinan: 6-A.

Q. To save time: Under the same circumstances as you just related? A. Exactly, that is right, sir.

Q. I show you Goverment's Exhibit 8-A in evidence and ask you who wrote the name David Chernoff on that? A. This looks like either my signature or Sam Siegel's signature, one of the boys that worked for me. I am not sure. It looks very much like my signature.

Q. Who printed the name Thomas Young on that redemption form? A. I believe I did, because this looks like my signature.

Q. Do you recall when that was done? A. This was done when the last bond, it was a single bond, was to be cashed. It was, I believe, a hundred-dollar bond. It was the last of the (129) series that Mr. Miller had had. And he had no redemption form. And I was sitting at his desk. So, I don't recall whether I signed it or Sam Siegel. I think I did, though. I can't be too sure. It does look like my signature.

The Court: Are you going to another subject, Mr. Hallinan?

Mr. Hallinan: Yes, I am.

The Court: I would like to be clear now: When these redemption forms were given to Mr. Miller—excuse me. These are not the forms I had in mind, so I will withdraw my partially stated question.

Mr. Rosenblum: May I see those a moment?

Mr. Hallinan: Yes (handing).

Mr. Rosenblum: All right, Mr. Hallinan.

Q. Now Mr. Mishel——

Mr. Rosenblum: May I have the bonds meanwhile, if you are not going to use them?

Mr. Hallinan: I am going to use them.

Mr. Rosenblum: All right.

Q. I show you Government's Exhibit 1, which is a bond cashed at the bank on December 29. Now yesterday you testified that you received some money (130) from Mr. Miller, the proceeds from the cashing of that bond, and that you gave Mr. Miller so much money. How much money did you give him on that date for that particular bond? A. $100.

Q. Now, yesterday when I asked you for a list that you could recall of the various stiff accounts that you had at the Pennsylvania Exchange Bank, you gave me some names and said that was all you can remember. I ask you if Frank Williams was the name of a stiff account that you had at the Pennsylvania Exchange Bank? A. Yes, sir.

Q. I show you Government's Exhibits 10 and 11 in evidence, the Thomas Young and John Case signature cards. Yesterday you testified that you gave these to

Mr. Miller. I ask you with respect to 10, first, the Thomas Young signature card, exactly what was on that, outside of the printed matter on the basic form itself when you handed it to Mr. Miller? A. The name Thomas Young which was written in by Sidney Hack was on it, nothing else.

Q. I show you Government's Exhibit 11 in evidence, the John Case signature card, and I ask you once again, (131) outside of the printed matter on the basic form itself, what was on that card when you handed it to Mr. Miller? A. The name John Case, which was signed by Sidney Hack, and nothing else.

Q. Now, Mr. Mishel, do you recall sometime in October of 1950 being arrested by Secret Service agents for the fraudulently uttering of the Chernoff bonds? A. I was.

Q. Do you recall when that was? A. I believe it was October 6, 1950.

Q. Now did they arrest you on that particular day? A. I was arrested by the Secret Service and the police——

Q. I am just talking about the Secret Service that particular day. Did they arrest you? A. They did.

Q. Did they take you before the United States Commissioner? A. I believe that afternoon I was taken before a Commissioner.

Q. And was bail set? (132) A. Bail was set.

Q. And did you raise the bail that day? A. Yes, bail was furnished.

Q. And did you go free on bail? A. I did.

Q. Some time thereafter did you contact Mr. Miller? A. I did.

Q. Can you tell us when you contacted Mr. Miller, to the best of your recollection? A. Some time thereafter.

Q. Well, can you fix it? Was it a year, six months or—

Mr. Rosenblum: May the witness be permitted first? I think this is leading, your Honor.

Mr. Hallinan: Yes, it is, but——

Mr. Rosenblum: Well, may we ask the witness's recollection before we give him any suggestions?

The Court: All right.

Q. Can you recall, Mr. Mishel, when it was? A. Shortly thereafter.

Q. By shortly, what do you mean? A. Maybe a week, maybe a day, maybe a month. It is six years ago these things happened; they are (133) hard to remember.

Q. Just give me the best recollection that you have now. A. I think it was very shortly, maybe a week, maybe less, that I got in touch with him.

Q. Did you have a conversation with him at that time? A. I did.

Q. Where? A. I think I met him across the street from the bank, in the Holland house.

Q. What was that conversation? A. I said, "Hey, Jim, I got locked up for those Chernoff bonds."

And Mr. Miller said, "Well, don't worry about them."

I said, "What do you mean, don't worry?" I said, "I got locked up. Those tellers there said I cashed them there."

He said, "Don't worry, they won't have nothing to say about you. You just take of your end and keep your mouth shut. I will take care of my end."

Mr. Hallinan: I think I am through, but may (134) I have just a moment, your Honor?

You may inquire.

Cross examination by Mr. Rosenblum:

Q. Mr. Mishel, what is your deal for testifying? A. No deal at all.

Q. You have no deal at all? A. None whatsoever.

Q. Never made a deal with any authority? A. No, sir.

Q. The State nor Federal? A. No, sir.

Q. Never had a deal of any kind? A. No, sir.

Q. You are positive of that? A. Positive, as positive as I am sitting here.

Q. And that is as true as anything else you have testified to, isn't it? A. That is the truth. I hope to get some consideration, but no deals were made. In fact, I was screaming and hollering, "I don't want to testify, I don't want to." And I spoke it over with my attorney, and he said, "You might as well clean the slate, and if and when you get back to your family you will get back at least with a clean mind, clear head, no things (135) hanging over your head."

I asked Mr. Malenky of the FBI if he could do something for me. He says, "We are bound by law not to do anything."

I asked Mr. Hallinan, the first time I saw him, "Are you going to do something for me?"

He says, "If you want to testify, you testify. If you don't want to testify, don't." He says, "But I make you no promises of any sort in any manner or form."

I got balky.

He said, "You do what you want." I wanted a promise, but nobody made me any promise of any sort.

Q. That applies to any authority, whether it be City, State, Federal; is that right?

Mr. Hallinan: I am going to—I don't know what relevancy any——

The Court: I will overrule the objection. Go ahead.

Q. That is true, as to there being no deal with any City authority, State authority or Federal authorities? A. I just got finished repeating that.

Q. All right, you say that is so. Didn't you (136) tell Judge Joseph that you had a deal? Is that right? A. No, sir, no, sir.

Q. Do you know who Judge Joseph is? A. Sure I know who Judge Joseph is. The man sentenced me.

Q. Do you remember appearing before him? A. The man sentenced me. The man sentenced me.

Q. Do you stand on your statement that you never said to Judge Joseph that you had a deal and it was in writing? A. I never remember saying any kind of thing like that.

Q. Do you recall, Mr. Mishel, whether or not you appeared before Judge Joseph on February 20, 1953? A. I don't recall when I appeared before me.

Q. Do you remember there was an occasion when you were represented by an attorney by the name of Samuel Bierman? A. I know Samuel Bierman.

Q. Did he represent you? A. At one time he did.

Q. Do you recall a time came when you were asked or he asked, rather, Mr. Bierman, to be relieved of (137) representing you? Do you recall that?

Mr. Hallinan: I will object to this. I don't know what relevancy it has.

Mr. Rosenblum: It is leading up to the particular thing.

The Court: I think you can lead up to it in some other way. I sustain the objection.

Mr. Rosenblum: Exception.

Q. Tell us whether or not you made this statement to Judge Joseph on the date I have indicated at the time when Mr. Bierman was in court with you: "The defendant," meaning you, "Your Honor, may I say something? I have a copy of the agreement with the New York County Office that he said they would see that one sentence was meted out to me for everything."

Did you make that statement? A. I can't answer that yes or no. But I would like to explain it, your Honor.

The Court: Go ahead, explain it.

A. May I explain that?

Q. Go ahead. A. I did make that statement. But that was in 1953, when I pleaded guilty in General Sessions Court, in New York County; the Assistant District Attorney (138) on that case said to me, "Plead guilty to the charge and we will see that one sentence is meted out to cover all the sentences." And that is part of the court record of the General Sessions Court when I was sentenced I think January 1953. If that is what you are referring to, I did say that. But that has nothing to do with this case one way or the other.

Q. Mr. Mishel, the matter that you were on before Judge Joseph concerned itself with forged instruments, did it not?

Mr. Hallinan: Your Honor, I am going to object to this. I imagine he is going to pursue the same line of interrogation, on the theory that what he has there is inconsistent with the denial of the witness that he has a deal. And I don't think it is. I think that one sentence to cover several offenses is not a deal with the implication that Mr. Rosenblum has in mind.

The Court: I will let him go ahead and pursue it as he sees fit. Go ahead.

Q. Can you tell us what the subject matter of the indictment, of the two indictments, against you (139) was at the time you appeared before Judge Joseph? A. Grand larceny in the first degree.

Q. Did it concern itself with stolen securities or bonds? A. It did.

Q. Did your statement containing your having an agreement in writing take into account what was pending down in the County of New York? A. What date was that, sir?

Q. What is your recollection? A. I don't know. I am asking you.

Q. Well, do you remember the date, I think you said before you remembered the exact date when you were arrested in this court? A. Yes, I recall that.

Mr. Hallinan: We are getting argumentative, your Honor.

The Court: I will allow him to go ahead.

(140) Q. Do you recall a moment ago I gave you the date of February 20, 1953? A. At that time I had already been sentenced in the State Court and in the Federal Court.

Q. And wasn't that the occasion when you were saying to Judge Joseph that in connection with any sentence he was to impose upon you in the Bronx Court, you had a deal in writing whereby it was agreed that you would have one sentence to cover all?

Mr. Hallinan: I don't want to interrupt, but to cover all of what? The State Courts have no authority to bind the Federal Courts.

Mr. Rosenblum: To cover all the State Court matters.

Mr. Hallinan: All right.

A. I did say that, but there is an explanation, as I just explained to you, that——

Q. Did you have a deal or didn't you?

The Court: Wait a minute.

A. No, I didn't.

The Court: You step back by the desk there. Now, you go ahead and explain it.

The Witness: I explained it. I was sentenced on the 16th day of January in this court.

(141) The Court: Which court?

The Witness: The Federal District Court here, and I was told at that time that if I go over to the Federal Court and get sentenced, that the State would run a concurrent sentence to that. That was the whole reason that I pleaded guilty to all crimes and I cleansed my soul. I spoke it over with my lawyer. He says, "You go over the Federal Court, plead guilty; you go over the State Court, plead guilty; you go up the Bronx and plead guilty," and I did just what he said, and he says, "I have made arrangements that one sentence will be meted out to you to cover these crimes." I was sentenced to five years in the Federal Court on a Monday of that week and on Friday I received a further sentence in New York County Court. The next morning I was in Sing Sing. A month later, the Bronx County brought me back and they said, "Well, we would like to know exactly what took place here." So I told them who did the signing on each and every set of bonds, and they said that they will do something for me, which I explained to Judge Joseph at the bench that day, but no deals of any matter have been made for me. As much as I would like it and hope consideration, nothing at all was promised me, and that is all I have to say. (142)I tried. I admit I tried, tried my darndest. I said to him, "I would like to find out what's what." He says, "I am sorry; if you

want to tell us your testimony, tell it to us. If you don't want to, just get up on the stand and refuse."

I talked it over with my attorney, Mr. Leo Cutler, and he said, "I think the best thing for you to do for your own sake and for the sake of your wife and child is tell the truth." So I am telling the truth.

Q. Mr. Mishel, in this last answer at one point you said that in your talking with the people in the Bronx, they promised you. What was it they promised you? A. They said to me that they will give me some consideration if I tell them who signed the bonds in the Bronx. There was two signatures of fictitious people.

Q. Which ones were they? A. The names of those bonds?

Mr. Hallinan: I will——

The Court: Just a minute.

The Witness: If I can see my statement, I could tell you the name of those bonds.

The Court: Mr. Hallinan, did you want to say (143) something?

Mr. Hallinan: It has been answered. When we get off into that area, I might as well state it for the record now that I am going to voice my objection that I voiced in my memorandum to you, which I served upon Mr. Rosenblum, upon the grounds laid down in the Provoo case, which I would like to get in the record.

The Court: I am familiar with it and let us not take the time now. You can file a memorandum if you want to as part of this record. I am familiar with it.

Mr. Rosenblum: We have a brief in draft form that we would like to file on that.

The Court: I will take it in any form as long as I can read it.

Q. What statement were you referring to—you mean the statement I had? A. No. When I made a confession to Mr. Milenky I told him everything that I did in detail.

Q. When? A. About three years ago, I would say.

Q. In point of time, as to the Chernoff transaction, you have testified about, can you tell us how long after, let us say that date—either December 29, 1949 or the date up to the middle of February, 1950—how long after (144) that did you make that complete confession to Mr. Milenky.

Mr. Hallinan: I will object to this on the grounds it is irrelevant and it is argumentative. He has the witness' answer as to the time the statement was given. The purpose of this question is quite obvious, your Honor.

Mr. Rosenblum: It is cross-examination.

The Court: You say he has the date?

Mr. Hallinan: The witness just said he gave the statement about three years ago. Now, he is going back. It is argumentative.

The Court: I will sustain your objection on that basis.

Mr. Rosenblum: I except.

Q. When you say three years ago, you want us to understand that the first time you made a statement was sometime in the month of October, 1953?

Mr. Hallinan: I hate to do this, but I am going to object. He can put direct questions to the witness if he so wishes. I don't think he has to do it in this manner—do you wish us to understand. He

can ask, "Did you make another statement?"

The Court: The objection is overruled. Go ahead.

(145) Read the question.

(Question read.)

A. That is another question I can't answer yes or no.

The Court: You don't have to answer yes or no. If you can't answer yes or no, just say so.

The Witness: I made many statements. I made statements from time to time as they discovered different bonds that were cashed. I don't remember in days.

Q. I am asking you— A. But you are saying yes or no, and I can't answer yes or no.

Q. When you can't answer, please say that you can't answer. A. I want to explain myself.

Q. You said that you made a complete confession to Mr. Milenky about three years ago. I followed that by saying: Do you mean by that three years from now, which would bring us into October, 1953, or approximately that date? A. It may have been two years ago that this confession was made.

Q. It might be two years ago? A. It may have been three. I don't know for sure. (146) I have to see my statements.

Q. Let me ask you this. When for the first time did you make any confessior? A. To whom?

Q. To any authority, be it State or Federal.

Mr. Hallinan: About what?

Mr. Rosenblum: I think the witness knows what we are referring to.

The Court: Was that you who said that, Mr. Hallinan?

Mr. Hallinan: Yes, sir.

The Court: I am going to ask you to stand up and make any objection you have to me, but please don't put things in the middle of Mr. Rosenblum's question.

Mr. Hallinan: All right.

Q. When, for the first time, Mr. Mishel, did you make the first statement to any County, State or Federal authority with reference to a confession as to any part you played in connection with forged or stolen securities or bonds?

Mr. Hallinan: I will object to this on the grounds I tried to indicate to your Honor before, that this also includes the area that I am objecting to because I don't think under the rule of this Circuit, (147) the majority rule, it is the proper subject matter of cross-examination for impeachment purposes as outlined in the Provoo case. If the question is made more specific, I might not have an objection.

The Court: I will let him answer.

A. What is the question?

(Question read.)

The Witness: I don't recall the date, but the first confession that I made was to an Assistant District Attorney in New York County, John McAvinue.

Q. Can you tell us in point of time when that was? A. That was at the time that I was told that one sentence

would be meted to cover all these crimes that were committed.

Q. In everything, Federal and State? A. That was what was promised.

Q. You did have that promise? A. I just got through explaining to you, Mr. Rosenblum.

Q. I understand. Fix that date, if you can, when you made your first statement to McAvinue.

The Court: I will strike out Mr. Rosenblum's comment regarding the promise. I think that was entirely improper and I will tell the jury to disregard it.

(148) Mr. Rosenblum: I think the witness used the word "promise."

The Court: You are using it in two senses. You say he had no promise with respect to his testimony in this case. He did have a promise when he pleaded guilty in 1953 to cover three cases with one plea. Don't suggest that when he says he had a promise with respect to that plea, that is inconsistent with his statement that he has no promise here.

Mr. Rosenblum: I will stand on the record. I think the record shows what he said.

The Court: Read the pending question.

(Question read.)

A. I believe it was the early part of 1951, sometime in 1951. I was out on bail for the Chernoff bonds at the time. Mr. McAvinue told me he would see that bail was reasonable in the Bronx case. My lawyer at the time, Sam Bierman, had several conferences with Mr. McAvinue. He called in my wife, and they told me the best thing to do was confess all these sins and make a clean breast of it, you get one sentence, you do your time, and you come

back and hope to be a better man. So I gave him a confession. Part of that confession he turned over to the Bronx, who put a warrant against me. (149) I made bail in the Tombs. I was taken to Bronx County Court. I made bail in the Bronx County Court. I was out on bail. I was arrested for the Roanoke, Virginia matter. I don't recall whether it was before or after. All I know is I was arrested, and I got sentenced for that. Time went on. All the signers of the bonds Mr. McAvinue apprehended, and each and every one of them pleaded guilty to the charge. There were no trials of any sort. In fact, Mickey Rosenberg pleaded guilty to the Nat' Chernoff bonds, and there was about eight or nine other people who had signed bonds. They all pleaded guilty to them, and when it came time for sentencing, Mr. McAvinue advised Judge Mullen of what took place. Judge Mullen adjourned sentencing to see the outcome of this Federal case that I had. The Federal case, Mr. Bierman said, looked like I was going to get three years, so he went back and spoke to Mr. McAvinue and Mr. McAvinue says, "I can't get the Judge to go along with that." So back he went and he says, "If he gets five years, I will see that the State Courts run their sentence concurrent, that he does one time for the crimes and gets out." After all, I was a first offender. I had no previous arrest except this assault thing, which was actually not my fault. I came (150) to somebody's aid. I had a liquor license in my name, and that was the reason for that what you call promise or complaining to Judge Joseph, because I know that Judge Joseph is a strict man but he is an understanding man. That is my answer to that.

Q. Do you have anything else you want to add? A. No, sir.

Q. I read to you before, and you agreed that it was the fact, that you said to Judge Joseph, "I have a copy of the

agreement with the New York County office." May we have that copy, please? A Mr. Rosenblum, that is another yes or no question. I don't have it. I says that my lawyer has a copy of what he said and Mr. McAvinue at sentencing advised the Judge of the same thing.

Q. What lawyer has a copy of that agreement? A. I don't know, but Mr. Bierman, Samuel Bierman, was the one that was negotiating, him and a Mr. Irving Spieler. They advised me, and I took their advice, and that is what I was complaining to the Judge about.

Q. Can you tell us whether you ever saw that copy of the agreement with the New York County office that you said would see to it that one sentence was meted out to you for everything? (151) A. I know when I made my statement to them, they incorporated it in the statement. They asked me what kind of sentence would I hope for. I said I would hope for probation or suspended sentence since I was never arrested, and he says, "Well, two and a half to five, I think we could work out."

Q. Who said that, please? A. Mr. McAvinue.

Q. Mr. McAvinue said, "Two and a half to five we think we can work out." Who is "we" and whom did it refer to? A. That is New York County. He said that is what he thought I would get.

Q. In New York County? A. That is right. Then when the time came to get it, instead of getting that, I got a different sentence.

Q. You mean the Judge was then against you? A. Well, the Judge——

Mr. Hallinan: I object to the question.
The Court: Objection sustained.

Q. Did you tell Judge Joseph that the Judge who sentenced you in New York County was a member of the Board of the Pennsylvania Exchange Bank, a director?

Mr. Hallinan: I will object to that on the (152) grounds of relevancy.

The Court: I will sustain the objection.

Mr. Rosenblum: I think interest is a very important factor in this case.

The Court: The interest of the judge?

Mr. Rosenblum: No, the interest of the defendant.

The Court: How can a board membership of a judge who sentenced him have anything to do with the interest of the defendant?

Mr. Rosenblum: We are not saying it is true. I want to ask him that and develop whether it is true.

The Court: I sustain the objection. Go ahead.

Mr. Rosenblum: I except.

The Court: While Mr. Rosenblum is looking at his notes, you mentioned a Federal case.

The Witness: Yes.

The Court: That was in the Western District of Virginia?

The Witness: Yes, Roanoke, Virginia, Western District of Virginia, Rocky Mountain.

The Court: That has nothing to do with this case here.

The Witness: No, sir.

Q. You were sentenced in this court here, weren't (153) you? A. They had some kind of——

—Q. By arrangement, they sent the matter up here? A. I know I was sentenced in this court for something I did here.

Mr. Hallinan: I don't want to be over critical, but we have been talking about promises and arrangements, and I just want to say that it was under Rule 20, where if he is apprehended in this district,

the whole matter is removed under Rule 20 and disposed of here if the defendant wishes to plead guilty and consents to it.

The Court: But that was disposed of in 1953. Is that correct?

The Witness: Yes, I think January 16th, Judge Goddard.

The Court: All right.

Q. Did that matter have to do with the transporting of stolen securities or bonds in Interstate Commerce?

Mr. Hallinan: I object to this. The conviction is relevant. If he justs wants to mention that, that is relevant, but not an exhaustive inquiry into the subject matter.

The Court: I will overrule the objection.

A. It did.

(154) Q. Was that the matter in which you said that Judge Caffey's nephew was involved with you?

Mr. Hallinan: I object to this, your Honor, on relevancy.

Mr. Rosenblum: I don't want to make statements in front of the jury.

Mr. Hallinan: Let us go to the bench.

Mr. Rosenblum: Maybe we should go into chambers.

The Court: All right, we will take a ten-minute recess. It is the middle of the morning.

(Jury excused.)

(Witness excused.)

(In absence of jury.)

The Court: Now, what is the problem?

Mr. Hallinan: I objected to this question on the grounds of relevancy.

Mr. Perry: Your Honor, I don't think the Provoo case stands for ——

The Court: I intend to go along with you on the Provoo case at the moment, anyhow.

Mr. Perry: Here is what we expect to show, Judge. There are probably four or five crimes for which Mishel has actually pleaded guilty. There are a number of others, three or four or five—I don't recall at the (155) moment, your Honor—which were included in his plea of guilty. In other words, the whole thing washed out at one time. We will show by exploring the facts of these crimes how this man Mishel operated, and his operations have a remarkable consistency about them in all of these cases, and he operates in two ways.

He operates, first of all, invariably and, as a matter of fact, in every instance that we know of, by duping a bank official; and then, secondly, he operates by duping people, even people who know that a crime is being committed, in other ways in connection with not telling them exactly what they are doing, or he actually will dupe innocent people.

In this Roanoke matter, we are prepared to show, your Honor—I don't know how much I should go into the facts—that one of the dupes of this man Mishel was a Federal agent; that this agent was introduced to Mishel by an attorney; that Mishel gave him a cock and bull story very fast one day in Virginia and the agent introduced him to bank officials, and as the result of that, Mishel passed certain bonds in a transaction somewhat similar to this Chernoff matter to a bank in Virginia.

That agent was exonerated, even though Mishel did (156) try to put him into the picture. We will

show, your Honor, in other instances here in the Bronx County, for example, a woman was indicted and later exonerated because she was found to be a dupe of Mishel.

The method of proceeding is so important in this case because it is the defendant's contention that Miller here was a dupe of this man Mishel, and I think we can show to your satisfaction, perhaps to the jury's satisfaction, that the way he approached this thing in the Chernoff matter was the same as his course of action.

The Court: Inasmuch as we have started on this, I imagine Mr. Hallinan is as familar with these various situations as you. There are two now.

Can I get an overall picture now of what other items you want to go into without prejudicing your case in any way?

Mr. Perry: Yes. Will you excuse me a minute, Judge?

(157) The Court: I just mean of this nature. I would like to get all these other unlawful acts.

Mr. Perry: Facts, your Honor.

The Court: Yes. I think my own interpretation of the Provoo case is that I have to decide each situation pretty much on the facts of that situation; that there just isn't any blanket rule that we won't go into prior vicious or immoral acts here as well. It will depend on the bounds of relevancy and credibility against the unfairness of possible prejudice. And that would work as to both defense and prosecution witnesses. Now, I have these two in mind and I would like to know if there are any others so that I can try to, I think I have to sift them, factual situation by factual situation.

Mr. Perry: The one group you can consider,

bank transactions. We will probably show six or seven. We are in the position to show six or seven that we know of, where the modus operandi is the same.

The Court: That is the situation where he makes a dupe of the bank officer.

Mr. Perry: Yes. And we can show in probably about six situations in which, perhaps two (158) in the Bronx and three or four of them, to which he pleaded guilty to, three or four of them. Another situation which would show a relevance to the issue I think is his duping of the Pennsylvania in another situation, and that was the first indictment returned against Mishel, and that is where he obtained the loan from the bank by false pretenses. And then he pledged with the bank these Altrin securities which also resulted in an indictment. We would show in that situation also he duped somebody into signing these bonds, somebody who didn't know that he was doing anything illegal.

The Court: Well, I will tell you how I approach this and I will give you time to do more extensive research on it if you see fit. My own feeling is that those transactions are not a proper basis for for cross-examination. The very parallel to this case is the very item, the very element that makes it improper cross-examination. I mean, as far as going to the general credibility of this witness, they are cumulative to the crime for which he has already been convicted. Therefore, their value, their materiality in the case in a legitimate fashion is small. (159) The danger to the case is that each one of those situations you produce would produce a separate trial. In other words, you say he duped a bank officer. Mr. Hallinan has to go out and prove that the bank officer was a party to it, that he

was not a dupe, or that he was a happy colleague. And we get into this problem of trying six or seven cases in one.

So I think that on the present state of my learning in the field and the present state of the record I will sustain the objection to that. Now I don't do it on any broad scale approach from the Provoo case. I think the same situation came up in the Provoo case, and what the Circuit Court of Appeals said was that proof of homesexuality has little bearing if any on the question of credibility and has terrific weight from the point of view of prejudice and it shouldn't have been gone into. They did refer to a line of cases which seem to say in general fashion that the Federal rule was that you can't go into prior vicious and immoral acts where there is no conviction. I don't think the rule, at least my present thinking, and I am not ready to say (160) that rule is any solid inflexible barrier, that if the prior vicious immoral acts would have an appropriate weight on the question of general credibility and will not confuse the main issue of the case and will not get us off into the trial of a whole series of similar or allegedly similar transactions, that they could be gone into on cross. I think you have to look at each situation in the light of the particular case you are trying and the particular transaction which you want to cross-examine on. And from what you have told me I don't think we ought to go into those.

If you can get some cases I will be glad to look at them. But that would be my tentative ruling now.

Mr. Perry: Your Honor is familiar with the Ross case in this Circuit?

The Court: I am not sure that I am.

Mr. Perry: Your Honor, in that decision——

The Court: I don't like to delay it. What I would appreciate is this. This witness is not going anywhere; he is in custody. I would rather go ahead now. I don't like to hold the jury here. (161) But what I would appreciate is a memorandum from you, and I don't care how rough the form is, get the cases together that you want me to look at and I will look at it, and we can come back to this further if you want to. But at least you have in mind at the present time my present disposition of the matter.

Mr. Rosenblum: I have another matter which I would like to bring to your Honor's attention. Some of these things I am going into are for the purpose of showing the interest of the witness.

The Court: A perfectly valid reason for going into it, but I just want to be sure that we don't confuse interest that he may have had in the past, which has now expired, with the interest that he has now in this particular situation. That is why I interrupted as I did with respect to the comment which I thought you made. But we'll get along.

Mr. Rosenblum: I tried to point out, when the man testified that he has no agreement of any kind, only by my developing it as I have been going into these things, when he said he never had an agreement the jury can then consider all his testimony to see whether or not they should give the weight to his (162) testimony that it ought to have. I am not impeaching him. It is a question of trying to show those facts that the jury should consider. In other words, with that in this case, I think I could put into the record and the proof would show that he has consistently followed a pattern of doing a number of things for the purpose of getting benefit

for himself and that he now similarly has that interest in what he is doing now.

The Court: That is the sort of thing that the courts have shied away from. I mean, what they have always tried to do is avoid trying 99 other other cases along with the one they are trying at that present time. There are one or two situations, which I know you know very well better than I, but I don't think this is one of them. And I have let you develop what you might call this little cluster of 1953 cases. But, frankly, from the distance that you have gone I gather that whatever arrangement he had in connection with them are completely unrelated to his testimony here. Therefore I am not disposed to go much further on that subject. And as for going off into a discussion of his general ability to dupe bank officers or anybody else——

(163) Mr. Perry: Or banks.

The Court: —banks, bank officers, FBI agents, anybody else, or even courts, I have not disposed to do that by proof of particular transactions. It just would encumber this case with the trial of too many extraneous issues, because I just can't go into that, without having Mr. Hallinan get back into it, and I don't think that the productivity of cross-examination would justify our going into it.

Mr. Perry, have you got something further?

Mr. Perry: Yes, Judge. Two things. First of all——

Mr. Rosenblum: This is out of the presence of the jury so we can say it to you.

Mr. Perry: We have evidence, we have been informed, that there is a deal with the Government or the agent in this case.

The Court: Just a minute. You are at perfect liberty, as long as you are informed or that you

suspect that such a deal could have been made, to cross-examine about it. I am just talking about the manner, the approach to it, by going through a series of completely independent deals that he may (164) or may not have made in the past. There is a limit as to how far we can encumber this case with proof with respect to them, because if you go into it on cross I have to let Mr. Hallinan go into it on redirect, and then you come back on recross, and we will spend a week getting down all of the new answers of his on what seem to me a completely unrelated transaction with Bronx County and New York County, now, if we are going down to the Western District of Virginia, and I just don't think that it is—I have to keep in mind at all times whether to help you get a few more straws to build up and accumulate in your cross-examination, I don't think I am justified in exposing the jury to that kind of confusion and distraction from the issues of the principal case.

Mr. Rosenblum: Don't you think, in the light of the fact that the witness has said he doesn't have any agreement now and he never had any agreement, that——

The Court: He never had any agreement with respect to his testimony in this case. He has never said that he never had any agreement with respect to his testimony in any case, as far as I (165) recall. That was really the sense of his testimony as I got it. And that is what I very much want to avoid any confusion on. I don't see how anyone could listen to his testimony this morning and not come away with the impression that when he pleaded guilty in New York he went over the thing prettty carefully, he canvassed it, he wanted to know whether he was getting a consecutive sentence or a concurrent sen-

tence. He didn't have a binding deal but he did his best to get one and he at least had what he thought, accurately or otherwise, he at least thought he understood the statement of the prosecutor, at least he thought the prosecutor had made some predictions to him as to what he thought he could get. So in that sense he had a quote deal close quote. But that was, as I see it, entirely unrelated. I don't see how that deal with the prosecutor could affect his testimony here from the point of view of interest. It might have some passing effect, that he got into a mess, and again it shows how when he is in messes——

Mr. Rosenblum: If you remember the testimony it really amounts to this: He says, "I never wanted to give anybody up." He said, "I never wanted to (166) talk, I never wanted to cooperate. My lawyer and my friends and others told me to cleanse my soul." So he ties it in with the statement that he—he says he never had a deal in connection with any sentence that was to be imposed upon him in the County or in the State, and I broaden it to the State, or Federal, I having in mind that he had pleaded guilty in two counties, and also in the Federal. And he made that flat statement.

It isn't a question of whether he got what he thought he ought to get or what he said they promised him.

But I think if I can show that at that time when he took the position "I have a deal" in connection with the sentence, and it also tied into the Federal, if I can develop those circumstances, that that ought to be considered in connection with my question as to whether or not he has any deal in this case.

The Court: You say if it is tied into the Federal. I assume you mean this particular case.

Mr. Rosenblum: Yes.

The Court: Not with some dead Federal case?

Mr. Rosenblum: No.

(167) Mr. Perry: If the sequence can be developed a little I think you will see—we have no personal knowledge whether there is a deal or not; there is information we have received that there is a deal. We could tell you if you wanted to know.

The Court: No. I rely on both of you as responsible people not to go into something if you didn't think there was any basis. But, as we all know, our bases are frequently erroneous.

Mr. Perry: Oh yes. But dispassionately, leaving aside any question whether it is or is not, we think if we are able to develop by close analysis Mishel's disclosures and the dates of the disclosures we think we can, entirely apart from my information, leave an inference from which the jury might well draw—I will tell you frankly that the reason he has not been charged with any crime relative to the Chernoff matter, of which he could be charged with two or three, is because of an understanding that no charge was to result.

Mr. Hallinan: That what?

Mr. Perry: No charge was to result.

Mr. Hallinan: Oh, I will have the assistant who handled the case testify why that was done, your (168) Honor. He had received 10 to 20.

The Court: That was the thing that occurred to me.

Mr. Hallinan: I will have the assistant, if you like, tell——

The Court: He had a maximum that the State could hold him for—15 years? 20 or 30?

Mr. Hallinan: 20——

The Court: Was the 5 to 10 concurrent?

Colloquy of Counsel

Mr. Hallinan: No. On 10 to 20—five years.

The Court: So he had a maximum of 25 years.

Mr. Hallinan: Yes.

The Court: Mr. Rosenberg knows, from other days they don't usually continue prosecuting after that point.

Mr. Perry: I think there are two answers to that.

The Court: There are two ways to approach it. Either you work back and establish your links before you go into this other prejudicial evidence or you give me a written offer of proof which intertwines these things you want to develop and which you think will give you the basis for legitimate cross-examination.

(169) Mr. Perry: We have one practical problem. We have opinions of Mishel which may not be shared by Mr. Hallinan. But we would feel that any of these discussions if they were to filter back to Mishel, he would have suitable answers to most of the problems we might raise for him.

Mr. Hallinan: Your Honor——

The Court: I think they should not of course be discussed with him, and I don't think that there is any likelihood that they would. Of course you can cross-examine as to any conversations he has had with anybody and the dates of them and the times and the circumstances. As far as the prosecutor is concerned——

Mr. Hallinan: I am perfectly willing if they make the motion now to have your Honor instruct me not to discuss anything with Mishel until they finish their cross-examination.

The Court: I don't like to put people in strait-jackets, but I think we all know the sense of the thing. And, as a matter of fact, if you want to give

me your offer of proof, and if I think that there is anything to it that I need Mr. Hallinan's help on, then we will pass to the question of whether I discuss (170) it with him. But it is really a matter which advocacy is of a relatively limited help. I have to try to balance in my own mind the prejudicial aspects from the legitimate aspects of what you are trying to build up.

You get it together for me. We have the weekend coming up, and I will go over it when you give it to me. As I say, the witness is here. We can recall him if we need him.

I think that is about the best we can do. But my tentative ruling will be not to go into this question.

Mr. Rosenblum Your Honor is acquainted with the rule that even if a promise hadn't been made and if we can show that there is hope of reward——

The Court: He has stated that in his own words here. He says, "I hope, I hope hard."

Mr. Rosenblum: But if I could develop, I have a right to show that——

The Court: You have shown it, and I think very effectively. That is why I wonder about the cumulative effect of this. There isn't any doubt he hopes to get something. On the other hand, (171) he has not been promised anything, from what he said. If you want to go from there and cross-examine on that point, fine, but don't do it by showing promises in what seem to me to be unrelated cases at the moment.

Mr. Rosenblum: It is quite important. The jury will have to ultimately come to a determination as to whether or not they believe he is testifying because either he received a promise or the facts and circumstances are such that he hopes to receive a promise. I think that anything which is relevant

to that becomes admissible, even if it may mean working into some other cases. If we can establish from those other cases those facts which would help the jury to determine this very important and vital issue. For instance, I had hoped to ask him—we know that a man says, "I have done certain things"; we know what he has said he has done. That doesn't only go for the State. It goes for the authorities and for everyone who is in a position to be affected by it. And if we can bring to the attention of this jury that he at one time, I don't care, you don't want me to refer to name, time, place, or particular occasion, didn't make certain statements that he had (172) done certain things, hoping that that would be the basis for his reward, then I think it gives the jury that evidence which it might be able to use in evaluating the very important question as to whether he is testifying because of the interest he has in the outcome.

And we might as well recognize this. Your Honor said that I certainly do know from my past experience about lengths of sentences. You take in this case. If some step is taken to relieve this witness of the five years he has in this court, he is subject to parole in two-thirds of ten years. And that is the maximum that he would serve if they want to let him go, because of what he did. I say, and Mr. Hallinan may disagree with it if he thinks I am wrong, 10 to 20 he can be subject to parole in two-thirds of the time——

Mr. Perry In the normal situation, your Honor is certainly more familiar, at least as familiar, since we both worked in the same office, Judge——

The Court: We worked on the same problems at one time or another.

Mr. Perry: Your Honor knows that normally

(173) a parole board will not consider someone for parole at the expiration of the minimum sentence while there is outstanding another sentence to be served consecutively. In a situation like that, unless there is some equity at work, the parole board will cause an inmate to serve a very substantial part of the sentence he is now serving before paroling him, in which case he would then pick up service of the second sentence which overhangs.

The Court: My own experience, this is all speculative anyhow, but my own recollection is that very often they would parole on the first occasion if they thought there was another consecutive sentence. Whether the Federal aspects would make any difference to that I don't know. But if a man has two consecutive State sentences my recollection is that they will usually grant parole on the first or second opportunity the man had to get out, so that he could start serving his second sentence, particularly if it was a long one. I think that from what you and I know this may be both speculative and irrelevant.

Mr. Perry: I handled parole matters for a while over at the office.

(174) I would say this in any event, your Honor. The inducement that Mishel has, and whether it has been given to him by others or whether it emanates from himself, is to be released on parole at the shortest possible time in the State which on 10 to 20 would mean six and two-thirds years. In the Federal he has a five-year sentence but only one-third not to be served if the parole authorities take consideration of any special equity in his favor. So that actually riding on this case, whether express or implied or hope or not is about eight or nine years for this man.

The Court: That is what he may hope.

Mr. Perry: Maybe it is just a hope. We have information that it is more than a hope but he relied on this.

The Court: He hasn't refined his hopes but he certainly indicated he has hope. I think anything else much beyond that is going to be primarily cumulative.

But I have stated my position, and we are really going around in circles now. If you want to prepare a more direct statement of the intertwining effect you are trying to work out or you want to give (175) me further cases, I will be glad to look at them.

(The following proceedings took place in the presence of the jury.)

IRVING MISHEL resumed.

The Court: All right, Mr. Rosenblum.

Cross examination continued by Mr. Rosenblum:

Q. Do you know a prisoner by the name of Jacob Wissenfeld? A. I do.

Q. Can you tell us at what jails you were with him, if you were? A. I was at Westchester County Jail with him.

Q. Were you also down here in the New York City Jail? A. In the Tombs? No.

Q. Any place outside, within the City of New York, outside of Westchester County? A. Yes. I was in the Federal Detention House for a few days with him.

Q. With Wissenfeld? A. That is right.

Irving Mishel—for Government—Cross

Q. Did you tell Wissenfeld that you had a deal for assistance from the authority, Federal, State authorities, if you testified against Miller? (176) A. That is one of those questions, your Honor, I can't answer yes or no either. I would like to explain it myself.

The Court: Go ahead.

Q. Can you answer that? A. I am not going to answer that.

The Court: He said he can't answer that yes or no. He would like to explain it himself.

Q. Go ahead.

Mr. Rosenblum: I didn't hear the first part that he said he couldn't answer it.

A. Well, Wissenfeld——

Q. A little louder, please. Keep your voice up, if I may suggest it. A. Wissenfeld and myself were in the Westchester County Jail for about five or six weeks at one time, maybe more, I don't know, for some quite a few weeks. And may I call him Jake, because that is what everybody calls him.

(177) Q. Jake? A. Yes, he is what they call the jail house lawyer. You know what that is, I presume. He was giving me tall stories what he could do and what would happen if I didn't testify, what he could get me, and this, that and the other thing.

Q. Will you tell us what "this, that and the other thing" is? A. Look, Mr. Rosenblum, do you want me to tell it or do you want to stop me?

Q. I won't stop you. I have another suggestion. Will you keep your voice up? I have difficulty in hearing. A. I happen to be under medication. Pardon me a minute. Let me take this. I want you to know this is a strain.

Q. What is this? A. A strain confessing things. You know, it is not easy to confess things that were done.

Q. You found it difficult in the past? A. I did. I still find it difficult.

Q. How many people did you testify against?

Mr. Hallinan: I object to this.

The Court: I will let him answer. This will probably mark the limit of the interrogation with that (178) question, but I will let this question be answered.

A. I don't want to answer it.

Q. How many people did you testify against or give information about? A. I am not going to answer it.

Q. You are not going to? A. That has got nothing to do with this case here.

The Court: Well, you think back now and just give us the number.

The Witness: I refuse to answer that question.

The Court: I am afraid I will have to direct you to answer it.

The Witness: I still refuse, your Honor.

Mr. Hallinan: Your Honor, may I talk with the witness?

The Court: No.

Mr. Hallinan: All right.

The Court: All right, we will note your refusal. Go ahead.

Q. Will you please tell us of your conversation or conversations with Wissenfeld with reference to the subject matter I just brought to your attention? A. I would like to tell it in my own words without being interrupted.

(179) Q. I stand admonished, but will you keep your voice up, please? A. I do keep it up.

The Court: You go ahead and answer the question.

The Witness: We were in the Westchester County Jail for quite some time, and as I started to explain, Jake is what they call a jail house lawyer, doing twenty years to life, and Jake is the type of fellow that would squeal on anybody to get anything, and Jake was in the need of money quite badly. So Jake came to me and said to me, "Listen, I can get in touch with Miller."

I said to him, "Go ahead, do what you want. I don't care what you do."

So he got, through some lawyer I believe by the name of Vukor, something like that, he got in touch with you, and you sent back a message that you would see him that evening or something.

I says, "Look, Jake, do what you want." We were just having idle gossip as far as that is concerned. All it was was idle conversation between one prisoner to another because Jake happens to know me about fifteen or twenty years, but I don't know him. The only place I knew him from was jail. He knew a lot of people I knew from the lower east side. So he (180) told me that you offered forty, twenty—let me phrase it properly. He says he could give me $20,000, $30,000, or $40,000 in cash if I would go light on my testimony against Miller, and I told him that if I wanted to go light, I don't need him to get in touch with Mr. Miller because I know very

well how to get in touch with him. So the conversations continued and we gave each other tall stories. I would tell him, "Yeah, they are going to do this, they are going to do that." I gave him a lot of, shall I say, fairy tales.

The weeks went on, and I understand he contacted you and he said made arrangements. I said, "O. K., you can do what you want."

In the interim, he took me down as a witness that his civil rights have been violated in the Westchester County Jail. So I said to him, "Look, Jake, what is the sense of bringing me here?" I says, "I am here. It is tough enough being locked up." He says, "Well, you got to help me out. The warden wants my fingerprints and I don't want to give them, and you know that they coerced me to do it." I says, "I don't want your ideas one way or the other." He says, "Don't worry, you will have to come."

The next thing I knows I was brought to the (181) Westchester County Court and subpoenaed as a witness. I never appeared because the judge up there ruled that whether he was forced to or not had nothing to do with his giving his fingerprints.

Jake is known as a fellow that would do anything to get some money, and I understand he got in touch with you to get some money so he can fight his case. Originally he had fifteen to twenty, as he is a thief. He has been a thief and in and out of jails all his life.

After that he come back on some kind of motion and they gave him twenty to life. Subsequently I seen him in the Federal House of Detention and the authorities there would not let me talk with him at all. They separated us and it is just as well that they did.

Irving Mishel—for Government—Cross

A couple of days after, back he went, but as far as my telling him things, I could have told him anything, but all it was is fairy tales, and I can't say exactly what I told him because I could have said about anything. I did say that Mr. Miller was guilty and I meant it and it is true, but the other parts were fairy tales. Quite a bit of it is a fairy tale.

If you ask me the questions, what I said to him, I will tell you what I said was true and what was (182) fairy tales. I will be glad to do that——

Q. Tell us— A. Let me finish. You ask me the questions; I will be glad to answer them. But I don't want to answer them yes or no where I can't. That is all I ask. I don't want to be rude or anything.

Q. Have you finished? A. Yes, sir.

Q. Did he tell you that he wrote a letter to my office, and that no one got in touch with me excepting himself? A. That I don't know, but I can tell you this. As long as we are talking, we might as well get it out without this cross-examination. I will tell it my way, whether it be right, wrong or what. Wissenfeld told me nothing about your part of the bargain. All Wissenfeld told me was that he could get in touch with Mr. Miller and that Mr. Miller had moved from one address to another address on Park Avenue. I believe it was 515 to 535. And if I wanted, he would see that Mr. Miller got me some money that I should go light on his testimony. And I told Jake as far as going light, I won't go light and I won't heavy. All I want to do is tell the truth and get finished with this mess.

(183) Q. Did he tell you that he wrote a letter to my office, to me, and had his sister get in touch with me? Did he ever tell you that? A. After——

Q. Did he or didn't he? A. I can't answer yes or no to that.

Q. You can't answer that yes or no? A. No, no.

Q. Go ahead. A. There was another prisoner there by the name of Macken. I don't know his full name, but they called him Red, and the day Wissenfeld left, Red grabbed me aside and said to me, "Listen, Wissenfeld is looking to set you up on this fairy tale that you told him," and that is when I found out exactly what took place. All I thought was that it was a fairy tale between us, you know, idle jail gossip. Wissenfeld was supposed to write some writs for me, and I, like a fool, listened to some of it, but actually telling him anything about this case other than Mr. Miller was guilty, I didn't say one word.

Q. Are you finished? A. Right.

Q. Did he tell you that Mr. Perry, who sits here (184) and is an associate in my office, was up to see him? A. I don't remember.

Q. Did he tell you that what you referred to as fairy tales, with reference to the deal if you testify in this case against Mr. Miller, that he told that to Mr. Perry? A. I don't recall him telling me anything about Mr. Perry.

Q. You have no recollection of that either way? A. No, one way or the other. All I recall is he says he could get me a chunk of money, and I says, if I want a chunk of money, I can get it without him, and I certainly don't need him to go to somebody who I used to sit at his desk day in and day out.

Q. Do you say now that his statement that you had a deal with Mr. Milenky, in particular, that you would get consideration in connection with the time that you were doing, was a fairy tale? A. That is one of those questions I can't answer yes or no. I just got through explaining to you what I told Jake and I told it to you just here the same thing. You are just trying to repeat me.

Q. Did you tell him that you had a deal? A. No, no,

no, no deal. In fact, I was screaming at (185) Jake. I told him I can't get nowheres with the U. S. Attorney's office. They don't want to promise me a thing. I used different language, but since we are in court I can't use it.

Q. Go ahead. A. Jake told me, "Why don't you write out some kind of a writ to get out of their custody, show cause why they don't try that case, get it disposed of, what and wherefor to it," and I said to Jake, "All right, write me one out," and he did. He wrote me a writ out, but I never used it because when I saw my lawyer, Mr. Cutler, who was my lawyer then, he says, "Why do you listen to jail house lawyers? You have got to do your time and forget about it. If you get any consideration, you will get it, but you know there is going to be no promises made." I see Mr. Milenky, and Mr. Milenky of the FBI said to me, "I can't promise you anything. I am prohibited by law." I saw Mr. Hallinan. I saw Mr. Brown. I saw Mr. Costiglio I asked them all the same thing and they all said, "We can't promise you nothing."

Mr. Hallinan: Would you mind my indicating for the record who Mr. Brown and Mr. Costiglio are?

Mr. Rosenblum: All right.

Mr. Hallinan: They are former U. S. Attorneys (186) in this district, who are no longer with the office.

The Witness: I saw Mr. Silverman also at one time, who is with this office, I think, an assistant, and he told me the same thing, "No promises could be made to you."

Q. Did you tell Mr. Wissenfeld and give him the details as to how you were coached in connection with your giving testimony in this case against Mr. Miller for which you were to get consideration? A. No, no. All I ever

told Wissenfeld would be maybe some of the facts and what Mr. Miller was guilty of. Other than that, everything else I told him was fairy tales.

Q. Give us what you refer to as fairy tales. A. I don't remember what I said. I could have said anything.

Q. You mean you could have said the things that I have just asked you about, but you don't remember them? A. No, if I said it, I would remember them, but I remember telling him fairy tales about a Mr. Horton, I believe is the name. I remember telling him fairy tales about that.

Q. You know about the practice of people in jail getting information from each other and then testifying against the other one? (187) A. He can do whatever he wanted with it.

Q. You know about the practice of getting information and then testifying against the person from whom you got the information? A. I don't know what he was going to do.

Q. I say, do you know about that? A. I don't know what he was going to do.

Q. Do you know that there is such a practice?

Mr. Hallinan: I object to this.

Mr. Rosenblum: I will change the form.

Q. Didn't you testify against someone in the Fox case in connection with what you claim somebody told you? A. I refuse to answer that question the same as the last one on the same grounds.

Q. That man was up for a life sentence or capital punishment, wasn't he, the case in which you testified against him as to what you claimed he told you in jail? A. I refuse to answer any of those questions.

Q. Isn't it a fact that when you testified in that case, you didn't even give the facts as to your conviction record?

Irving Mishel—for Government—Cross

Mr. Hallinan: I will object to this. We are getting into extraneous matter here. What he may (188) or may not have testified in a trial is entirely apart from this.

The Court: I will sustain the objection in so far only as it goes to the particulars of that case on trial. As to the truth or falsity, you go ahead.

Q. Did you, at the time when you appeared in that case, the one that is *United States* v. *Fox*, tell the jury and the Court the full facts of your conviction record?

Will you answer that question, please?

Mr. Hallinan: I will object to that question on the grounds the full facts of that would call for his going into the entire proceedings, what happened, the conviction itself or all of the facts on which the conviction was based.

The Court: Will you read the question?

(Question read.)

The Court: Do you want to reframe it?

Mr. Rosenblum: I will reframe it, yes.

Q. Do you remember the case of *United States* v. *Raymond Francis Fox*? Do you remember that case? Or can't you answer that yes or no? A. I told you three times I don't want to answer it.

(189) Mr. Rosenblum: I am going to ask your Honor to direct the witness in every instance, where he has previously during my examination refused to answer, to answer my questions.

The Court: Yes, I will so direct. He asked you whether you recall that name. You tell him whether you recall it or whether you don't.

The Witness: I told him I don't like to answer that.

The Court: It is not what you like. We are not here for a picnic. You answer the question.

The Witness: Yes, I recall it.

Mr. Rosenblum: As to two or three prior questions where he refused to answer the questions. I didn't ask your Honor——

The Court: I deliberately followed your lead. I have done exactly as you asked me. You tell me when you want me to direct him.

Mr. Rosenblum: Fine.

Q. Do you recall testifying in that case as a witness against Mr. Fox? A. I do.

Q. Was the charge kidnapping, without going into the details, so we will know what case we are talking about?

(190) Q. And can you tell us whether or not you testified, and I will give you the date and see if it is the approximate date, on February 10, 1954, before Federal Judge Clarence J. Galston? A. I think that was his name.

Q. In that trial, were you asked as to how many times you had been convicted? Do you recall that? A. No, I don't recall that at all.

Q. Can you tell us whether it wasn't the fact that by February 10, 1954, you had three convictions? A. I recall the trial, but I don't recall what I said as far as prior convictions now.

Q. That was not my question. My question was: Can you tell us whether it is not the fact that by that date, February 10, 1954, you at that time had already been convicted of three different felonies? A. No, I don't think I was convicted of three different felonies at that time.

Q. Three convictions, whether felonies or misdemeanors. A. I think that when I testified there, I stated the New York County conviction and the Federal conviction. Now, I was not convicted until after I am sentenced on the Bronx one, and I was sentenced in 1955.

(191) Q. Forgetting the Bronx one, hadn't you been convicted of three felonies by February 10, 1954? A. Three felonies?

Q. Yes. A. No. You will have to refresh my memory and show me where there was three felonies.

Q. Were you convicted of using a blackjack in felonious assault? A. That is no felony.

Q. 1897 is not a felony? A. The way I understand it, it was a misdemeanor, and I got a six months' suspended sentence. If that is what you are referring to, I may not have said anything about it because later on that thing was straightened out. I happened to hit somebody for a friend of mine, who owned that, and subsequently after that conviction I got a liquor license in the State of New York.

Q. You hit somebody with a blackjack. Isn't that so?

Mr. Hallinan: I will object to that. It is the conviction he is interested in. He doesn't have to go into the details of it.

The Court: I will let him go into the details.

Q. It was a conviction for a violation of 1897 (192) with a blackjack. Isn't that so?

The Court: I am not sure I understand your question now. Are you asking him what he was convicted of or what he did?

Mr. Rosenblum: I will withdraw it.

The Court: All right.

Q. Do you recall you were cross-examined by Mr. Petoni, the attorney for Mr. Fox? You may not know the name. If you do recall the name, tell us. If not, I will modify the question so that it will include: Do you recall that some lawyer who represented Mr. Fox cross-examined

you? A. I remember he cross-examined me for about three minutes.

Q. Can't you really answer that yes or no or do you want to give it your own way? A. About three minutes he cross-examined me, maybe a little more, a little less.

Q. The answer then is yes, right? A. Yes.

Q. Do you remember on your direct examination you testified to the fact that you had a conviction of ten to twenty years? A. I do.

(193) Q. Regardless of whether that first conviction of yours was a misdemeanor, or a felony, the fact is you were convicted, is it not? A. The fact was I forgot about it because I——

Q. You know now? A. Well, you are reminding me of it so I know about it now, but at the time I forgot about it. I don't know what that has to do with anything else.

Q. Do you now admit that when you testified at that time, you did not truthfully answer the question as to the number of convictions that you had? A. I admit that I said I had the conviction in New York County, and I admit that I had the conviction in the United States District Court of Virginia. The other one I don't remember whether I said it or I didn't.

Q. Let me see if I can refresh your recollection. Do you remember that the first question asked on cross-examination was:

"Q. How many other convictions have you had against you, Mr. Mishel? A. Pardon me?

"Q. How many other convictions have you had? A. Just one.

"Q. And that is a ten to twenty conviction? (194) A. I have a Government conviction also.

"Q. A Government conviction also? A. Yes.

"Q. I see. How many convictions have you then? A. Two."

That wasn't true, was it? A. I could have been mistaken.

Q. But that was not true, whether it was a mistake or not. Isn't that the fact?

Mr. Hallinan: I think we are getting argumentative. He has the testimony here. He has the testimony there. He can argue to the jury.

The Court: I think that I will sustain the objection on that ground.

Mr. Rosenblum: I don't have the testimony unless I put it in.

The Court: Do you want to ask him whether he so testified?

Mr. Rosenblum: That is right.

The Court: That isn't what you asked.

Mr. Rosenblum: I am sorry.

Q. Can you tell us whether or not it is a fact that this question was put to you and you made this answer:

(195) "Q. I see. How many convictions have you then? A. Two."

Did you so testify? Will you please answer that yes or no if you can? A. I don't remember.

Q. Did you, Mr. Mishel, in addition to talking with Mr. Wissenfeld on any occasion talk to other inmates at the Eastview County Jail in Westchester in which you told him of a deal that you had for testifying in this case?

Mr. Hallinan: I will object to that unless he directs the witness' attention to one specific person, which I understand is the rule under, I think it is, the Chicago case. It is 137——

The Court: One particular conversation, you mean?

Mr. Hallinan: You are supposed to direct the witness' attention to the specific person if you are trying to show testimony through that person.

The Court: I am not sure I understand either the question or your objection.

Will you read the question?

(Question read.)

Mr. Hallinan: My objection is that the proper (196) procedure is to direct the witness' attention to a specific person and then ask the witness, "Did you make this statement to that person?"

The Court: I am going to sustain the objection as to form, not necessarily on the ground which you urge.

Mr. Rosenblum: Exception.

Q. Did you tell Wissenfeld that you were interviewed by agents at the FBI at Sing Sing? A. I don't remember what I told Wissenfeld.

Q. You did say that you believed in or about 1951 you made a statement with reference to this case to Mr. Milenky? A. I didn't say that.

Q. That is what I understood it to be. A. No.

Q. Well, tell us then— A. See, you were asking about statements. I made several statements, as I said. The first statement I made to Mr. Milenky was in the Bronx County Jail.

Q. When was that? A. 1953.

Q. That is the first statement you made to Mr. Milenky? A. That is the first time I ever met Mr. Milenky.

(197) Q. I may have misstated that. I think you said you made a statement to Mr. McAvinue? A. I did.

Q. Prior to the time you made a statement concerning this case to Mr. McAvinue, did you make a statement concerning it to any other living being? A. I don't remember.

Q. See if you can think back and in particular I direct your attention starting with February 16, 1950, or February 20, 1950, which you identified as the date of the last cashing. When, after that time for the first time, did you make a statement, either oral or in writing, and tell us if it was oral, whether it was recorded by the person you made it to, with reference to the facts in this case which are at issue before this Court and jury? A. I don't remember.

Q. Can you give us any approximate date? A. It is hard to say. You are asking things that happened six, seven, eight years ago. I don't recall it.

Q. You don't recall things that happened six, seven or eight years ago? A. Certain things that stick out in my mind I do (198) recall, and I recall them just as if it happened yesterday, and others I can't.

Q. There are just certain things you can't recall. Is that it?

Mr. Hallinan: I object. That was the witness' answer and it does not have to be repeated.

The Court: I will sustain the objection.

Mr. Rosenblum: I will withdraw it.

Q. Did you make any statement to Secret Service Agent Sershen in connection with the Chernoff bonds? A. I don't remember if I did or I didn't. I remember he was one of the arresting officers, but whether I made statements to him or not, I don't recall. I know who Mr. Sershen is.

Q. If you made a statement to him, was it the truth? A. I don't recall if I made a statement to him.

Q. If you did make a statement, if it should develop, would it be a true statement?

Mr. Hallinan: I object to that as hypothetical and speculative.

The Court: Objection sustained.

Mr. Rosenblum: Exception.

Q. Do you flatly say that you did not make a (199) statement? A. I didn't say I did or I didn't. I just don't remember.

Q. That is, you may have? A. I don't remember one way or the other.

Q. That is, you may have and you may not have? A. I just don't remember.

Q. See if you recall whether you made a statement to Mr. Sershen orally, not in writing. A. I don't remember.

Q. When did you meet Mr. Sershen for the first time in your life? A. When he arrested me.

Q. And that was? A. When I got arrested.

Q. What is the date? A. Sometime in 1950.

Q. Don't you remember the exact date? A. Oh, if I get my records, I could remember the date.

Q. Don't you remember this morning you gave the date of October 6, 1950?

Mr. Hallinan: No, it wasn't this morning.

Mr. Rosenblum: Today, this morning.

(200) A. If I gave it this morning, that was the right date.

Q. You don't now remember whether October 6, 1950, is the right date? A. Yes, it is the right date now that you refresh my memory.

Q. Well, did you get that particular date from anyone just before you testified so that you remembered it three hours ago?

Mr. Hallinan: I object. The record will indicate that I put, without objection, this specific question to the witness, "Sometime in October of 1950 were you arrested by secret service agents?"

The Court: I will overrule the objection anyhow.

Q. Did you talk with anyone before you testified this morning about the date on which you were arrested by Agent Sershen? A. No.

(201) Q. Now you say you made bail on that date, which you say you now recall, in the light of my bringing it to your attention, October 6, 1950, is that right? A. That is right.

Q. When for the first time— A. I can hear you. Step back.

The Court: You just answer the questions. If I want——

Q. I wasn't raising my voice. I just happened to want to walk a couple of steps.

I didn't raise my voice. I certainly shouldn't be admonished by the witness as to whether I should step back or not.

The Court: I am trying to explain it to him. You just take care of answering questions.

The Witness: I can hear him.

The Court: And leave everything else to me. All right. Go ahead.

Mr. Rosenblum: Would you please tell me how it started?

(Record read.)

Q. (Continuing)—after that date, October 6, 1950, did you speak to the authorities, any Federal, (202) State,

County, with reference to the Chernoff bonds? A. I don't remember when.

Q. Would you recall whether you spoke at all to any person that I have just indicated, either Federal, who was an authority either for the Federal, State or County, with reference to the Chernoff bonds in 1950, the rest of that year? A. I remember in October of 1950 when I was arrested they asked me about them and I refused to answer any questions to them.

Q. After that, tell us when for the first time, if there was a time. A. I don't remember, I don't remember.

Q. Don't you remember any of the things which occurred in 1947 or '48? A. I don't remember.

Q. Don't you remember anything about what you did in 1947 or 1948? A. I don't remember.

Q. You remembered you spoke with Mr. Gallagher, didn't you? A. Those points stick out in my mind.

Q. Those points stick out in your mind.

(203) Mr. Rosenblum: May I stop at this point?

The Court: We will resume at 2.15. Don't discuss the case among yourselves or with anybody else.

(Jury retired.)

The Court: I thought the witness was going to say something.

The Witness: All right, that is all right.

The Court: All right.

(Recess to 2.15 p.m.)

(204)

AFTERNOON SESSION

(The following proceedings were held in open court out of the presence of the jury.)

Colloquy of Counsel

Mr. Hallinan: Your Honor, before the jury is called in I should like to request permission for the witness Mishel to be brought in and out of the presence of the jury make a statement to your Honor, which I think he is entitled to make, concerning his refusal to answer one of the questions this morning.

The Court: All right.

Mr. Hallinan: I think it should be on the record, and I think you should be aware of it.

The Court: As he went out he started to say something and he changed his mind. And, as I say, I haven't taken any step of my own momentum here, I don't think, because I didn't want to upset the flow of cross. If you want me to compel him to do anything, why, one or the other of you, make an appropriate motion and I will do it.

Mr. Hallinan: May we have the witness Irving Mishel in?

Mr. Rosenblum: May I say this. I don't (205) want to make a speech. But it was quite clear that this man instead of answering questions yes or no, he was just making statements and I know I could have moved to strike it out. I may not have heard all of it. But that it was not responsive. I don't want you to feel as though I am doing——

The Court: You make whatever motion you think appropriate and I will make the ruling that I think appropriate.

IRVING MISHEL resumed.

Mr. Hallinan: May the record indicate the following, that the witness Mishel is about to make

a statement and this statement is out of the presence of the jury.

The Court: The record already indicates that. Go ahead.

All right. Speak up so that everybody can hear you. The defendant has to hear it, too.

The Witness: Your Honor, I am presently located in West Street and last night I was threatened there, I was threatened by three different people. And this man—first of all, I want to apologize for not answering the question, and that was the reason (206) I didn't want to answer it, because what he asked me about involves West Street, where I have testified in that case, something that took place originally in West Street that I attested to in Brooklyn, and that was why I was so reluctant to answer it. After all, I have two small children and a wife, and I fear bodily harm there.

The Court: Well, in that respect I think we will have to get our ground rules set, and that is that when you are asked a question and I direct you to answer it that you must answer. Now, if there is some particular reason known to you why that answer should not be requested, I don't mean a subject of law but if as to a fact which you know that none of us know, why, then you ask to speak to me out of the presence of the jury, or you can ask if you can consult with the Court. Now it is obvious to you that you shouldn't do this very often.

The Witness: No, it won't happen.

The Court: But if something like that comes up, why, you may do that.

Now as far as West Street is concerned, I think that the United States Attorney must take appropriate steps to see that Mr. Mishel is kept (207)

separate from not necessarily everybody but at least the particular persons who he believes are attempting to press him one way or the other.

Is there anything further that anybody wants to say at this time?

Mr. Hallinan: I should like to make something clear, that the witness informed me he has specific reference to the interrogation on *United States* v. *Fox* because Fox was at that time incarcerated in West Street with the witness and he is presently incarcerated there.

The Witness: No, he is not there right now.

Mr. Hallinan: You.

The Witness: Yes, I am.

Mr. Hallinan: The witness is presently incarcerated there.

(208) The Court: In other words, he doesn't like to testify as to something he did on the basis of what happened in West Street while he is at the moment in West Street.

Mr. Hallinan: Yes.

The Court: I appreciate his difficulty. On the other hand, I thought we had to go into that as to acts bearing on the issue of general veracity, and I want to give the cross-examiner a free hand to at least the point when it becomes cumulative. I think we are through with the Fox situation anyhow. So as other things develop, we will see what we have to do.

(Jury in box.)

Cross Examination Continued by Mr. Rosenblum:

Q. Mr. Mishel, you told us this morning about your conviction for the assault in 1945. Do you remember that? A. Yes, sir.

Q. After that time and until you came into possession of the Chernoff bonds, were you committing any crimes? A. Yes, some crimes were committed.

(209) Q. During what years? A. I don't recall the years, but I was a bad boy.

Q. I don't want to go beyond your being a bad boy. What other crimes were committed that you can tell us about between 1945 and 1949 that you brought to the attention of any particular persons?

Mr. Hallinan: I will object to this as being very general. I cannot properly phrase an objection unless it is specific, and if that particular subject matter is relevant by your Honor. I will object to such broad and all-inclusive questions.

The Court: I will let him answer, that yes or no, and then when we come to the question of particularity, we can pass on the situation as it arises.

Q. I think you said the answer was yes? A. I believe I did.

Q. Is the answer yes? A. Can I hear the question again?

Q. You told us about the time when you were convicted in 1945—A. No, I wasn't convicted in 1945. That was assault.

(210) Q. What was that? A. Assault in 1945.

Q. That is what I said. A. Yes.

Q. You were convicted for that, weren't you? A. Yes.

Q. Then I brought to your attention that you gave us a date when you came into contact with these Chernoff bonds. Do you remember that? A. Yes, I do.

Q. My question was: Can you tell us whether or not, say, from 1945 after you were convicted, up to this time you received the Chernoff bonds, you were a good, decent, honest business man?

Mr. Hallinan: I think he has answered that, your Honor.

Mr. Rosenblum: I am changing the form.

Mr. Hallinan: He said he did commit other crimes during that period.

The Court: What is the question?

(Question read.)

Q. Can you answer that yes or no?

The Court: I will sustain the objection to the form. Go ahead. Now get down to what you want.

(211) Mr. Rosenblum: I will go back to the first question if I may.

Q. Between 1945 and the time when you came into possession of the Chernoff bonds, which you fixed as a time in 1949, were you committing any crimes? A. Yes, many crimes.

Q. What is that? A. Yes.

Q. Can you tell us when that was? A. Right through until I was apprehended.

Q. No, I am not talking about after 1949. I am talking between 1945 and 1949, the period when you received the Chernoff bonds. Were you committing crimes during that time? A. Yes.

Q. Can you tell us when? A. All during that time.

Q. Can you tell us whether it had to do with bonds? A. Some had to do with bonds.

Q. When I say bonds, let me put it to you this way: That is, bonds that had been stolen or forged? A. I am not sure whether they were forged, but (212) they were stolen bonds.

Q. Can you give us the year in which you had something to do with the stolen bonds? A. I would say it was right around 1949 also.

Q. Was it before the end of 1949, before the Chernoff bonds or after? A. I would say before the Chernoff bonds.

Q. And was there more than one occasion? A. I would say there was more than one occasion.

Q. About how many occasions? A. I think there was one or two just about the same time as the Chernoff bonds.

Q. Aside from those two, which were about the same time, were there any before the Chernoff bonds? A. I can't remember. All I can remember is certain sets of bonds that were cashed. I cashed lots of sets of bonds.

Q. Let me put it again to you: The sets of bonds that you cashed, did that take place before the date that you fixed when you say you received the Chernoff bonds, which I think you said was a day or two before December 29, 1949? I am not certain as to one date or another. A. Well, I recall about the same time. (213) It could have been before. It could have been after. There was a $5000 bond that was cashed.

Q. Was that the only occurrence? A. I recall another occurrence that was five $1000 railroad bonds that were not cashed. They were negotiated or loaned against or something. But I can't place dates exactly when those things took place.

Q. Would you say from the time of your trouble in 1945 until the time which you fix as at or about the time when you received the Chernoff bonds, you were a decent business man? A. I didn't say that. I never said I was decent.

Q. You never said you were decent? A. No, sir.

Q. Then I will take it out. You were just a business man who was not committing any crimes? A. I was committing crimes when I was cashing checks.

Q. You were committing crimes when you were cashing checks? A. That is right.

Q. Were any of those forged? A. The checks were not forged. The makers (214) were there, but the payees—I don't know if you would call it forged, but we were putting through these phoney or stiff accounts, as I ex-

plained once before, through the Pennsylvania Exchange Bank. This was going on for years. It wasn't for a day or a week that we cashed them.

Q. Did you have some accounts in the National Safety of the same kind?

Mr. Hallinan: I object to this. We are getting into matter that we discussed previously, and I won't extend my discussion any further but if your Honor wishes me to, I would approach the bench and offer my further reasons for it.

The Court: I think counsel are generally aware of my overall position. I will overrule the objection to this question, but I don't want you to think we are going much beyond it.

Read the question back.

(Question read.)

A. I personally did not have any phoney accounts. I had legitimate accounts in the National Safety Bank.

Q. Whom were you referring to who had the phoney accounts?

Mr. Hallinan: I object to this question or (215) any further questions along this line. I don't see what possible relevancy they could have.

The Court: I will sustain the objection as to form.

Q. Take the Young account that you testified about. Was that your account? A. It was one of the accounts we used to cash checks.

Q. Was it your account? A. Well, I caused it to be opened.

Q. Did you cause any similar kinds of accounts to be

opened at the National Safety Bank? A. Not that I can remember.

Q. No memory as to that? A. I know we had accounts at the National Safety Bank, but I believe they were all of living people, people that were in existence.

Q. And didn't you have any accounts at the Pennsylvania Exchange Bank of people in existence, living people? A. I had more people not in existence than in existence.

Mr. Rosenblum: May that part which is not responsive be stricken out?

(216) The Court: I will strike out the answer.

Read the question, and then you answer the question.

(Question read.)

A. I did.

Q. At the time when these accounts that you referred to yesterday as "stiffs" were in existence, were you connected with the Zenith Enterprises? A. That is not the right name.

Q. Give me the right name. A. Zenith Associates, Inc.

Q. Is it Inc.? Was it a corporation? A. Yes.

Q. The correct name then would be with the "Inc.", right? A. That is right.

Q. Tell me just what was Zenith Associates, Inc. A. It was a corporation of me and some lawyer by the name of Joseph Paige.

Q. You and Joseph Paige? A. That is right.

Q. You both owned that corporation? A. We were stockholders in it.

Q. And you were the only stockholders? (217) A. Well Joseph Paige organized the corporation. He is a lawyer, and exactly how many other officers or stockholders he had originally, I don't know.

Q. You mean those originally when the corporation was formed, but you had the interest, you and Joseph Paige? A. My wife and Joe Paige were partners in it actually.

Q. Your wife? A. Helen Mishel.

Q. You were not? A. I was at one time and at one time my wife was.

Q. So that really your partner was Joe Paige? A. That is right.

Q. Tell us whether it isn't the fact, in connection with the counts which you described yesterday as stiff accounts, that you used those accounts in order to deceive Joe Paige? A. No, that is not a fact.

Q. Tell us whether it isn't the fact that you would get phoney notes and have these discounted at Zenith's telling Paige that they belonged to someone else or that they were notes from bookmakers, and (218) then give the place where they could be checked as to whether they have an account, an account at Pennsylvania Exchange Bank. A. We used to loan money to bookmakers and hoodlums and wise guys, and we would use an account to clear it through so that they would pay them back—we would lend them some money for a year or six months or three months, and we would use sometimes one of those accounts to clear it through because we have a line of credit with that bank.

(219) Q. In which bank? A. In National Safety Bank.

Q. Is that the one that lost $180,000 to the Zenith Associates?

Mr. Hallinan: I object to the question. May we approach the bench?

(The following proceedings at the bench out of the hearing of the jury.)

Mr. Hallinan: As your Honor surmised this morning, and correctly, any of these interrogations

that relate to another bank the Government is fully prepared to go into an extended rebuttal of anything that they bring in here. I think that for all the reasons your Honor offered this morning I will not voice any objection to any interrogation of this witness with respect to the Pennsylvania Exchange Bank if he limits his interrogation to that. The moment he gets off into these other banks we are off into about fifteen very extended and lengthy interrogations, from the viewpoint of the defendant and the Government.

The Court: How much further do you want to go?

Mr. Rosenblum: I just want to establish from the information we have that he used these accounts (220) in the Pennsylvania Exchange Bank in connection with the operation of Zenith Associates, so that when he gives the story about these accounts coming into being, in part they were used for himself to put through phony accounts without knowledge of his partner.

The Court: Aren't we getting off into a collateral question?

Mr. Rosenblum: I don't think so. He has brought in this matter of stiff accounts. I didn't open it.

The Court: That only showed how the relationship began. That was the only significance of that.

Mr. Rosenblum: I think it left a much different impression, that there was something sinister, if he opened these accounts——

The Court: Let us go in the robing room.

(To the jury) I will ask you to just wait there for a second while we get this snag unraveled.

(The following took place in the robing room.)

The Court: Go ahead, Mr. Rosenblum.

Colloquy of Counsel

Mr. Rosenblum: The information we have is that these accounts which were opened by Mishel were opened, that is, the ones he refers to as stiff accounts, for, among other purposes, in order that he might have (221) a vehicle of putting through phony notes which he would represent to his partner, Joe Paige, in Zenith Associates, Inc. as notes received from bookmakers when in fact they were notes that he personally put through and in order to get the money by discounting these notes with Zenith Associates he made the remark that there were certain accounts so that then if Joe Paige, being advised of this note, that it was brought in allegedly by some person, Joe Paige would be told that that person whose note was put through had an account at the Pennsylvania Exchange Bank, so that when he called up the bank to see if Tom Young had an account, or whatever the name was, he would say yes, and Joe Paige, his partner, assumed that they were accounts of some outsider who was really borrowing money, another bookmaker. Now, the fact is that this vehicle was used in such a way that, together with other things which occurred it cost the National Safety Bank $180,000.

The Court: I don't see how that has any bearing.

Mr. Rosenblum: Not the 180.

The Court: Whether it was 180 or 8 or 800.

Mr. Rosenblum: The only question is the opening and the use of these accounts.

The Court: In other words, the loss on the (222) National Safety Bank has no bearing on the particular thing you are asking about, whether it was a loss or not.

Colloquy of Counsel

Mr. Rosenblum: I will withdraw that. As I said——

Mr. Hallinan: Your Honor, so that this may be clear, I will make this statement, since it is pin-pointed at this time in the trial, I should like to have the record very clear as to why I am offering testimony on the stiff accounts. There are three reasons. I outlined them because I expected, frankly, an objection during my opening statement, but since it is pin-pointed here I will go into it.

Mr. Rosenblum: You expected me to object? You should——

Mr. Hallinan: First the motive, which your Honor will understand, the Government never has to prove but is always entitled to prove, and by motive I mean that if Miller told the truth to the Treasury Department he would have opened up to investigation the entire relationship between Miller and Mishel. By truth I mean these bonds were cashed improperly. That would have opened up an entire investigation between these two people. So his motive in making the false statement was to protect himself and cut off this entire area of investigation.

(223) The second reason is that the circular letter sent out by the Treasury Department, as I said in my opening statement, required two things before the bank will be held free from liability: 1, that the customer be reliable, of known and reliability and integrity; No. 2, that the relationship between the customer and the person he identifies be equally as sound. Both conditions have to be present within the meaning of that circular before the bonds can be properly cashed. We offer this evidence to show that directly related to our case,

and we believe very relevant, the first condition couldn't have existed because if Miller knew of these stiff accounts and of the particular illegal operation, he must have known of the lack of Mr. Mishel's integrity. Thirdly, and perhaps most directly relevant to this particular case is the fact that one of the names on one of the stiff accounts was utilized in this very operation.

The Court: All right.

Mr. Rosenblum: May I add, in view of what you said: Of course the argument which Mr. Hallinan just made is predicated upon something which he says to your Honor as though he knows it to be the fact. That Mr. Hallinan knew it to be the fact I will accept (224) it. It is his belief.

The Court: Yes.

Mr. Hallinan: That is all I can say.

Mr. Rosenblum: I say it is his belief. But I don't think it should be said as though the argument is predicated that if he knew or if—certain circumstances were actually facts, that then some other thing could have occurred, because I don't think we can predicate an argument upon that. That will be for the jury.

The Court: As to what we will ultimately find on that, we don't have to gross that bridge now. He just wants us to appreciate what he thought the relevancy of the testimony was so far as it bears on the present problem. You want to show that these accounts weren't opened to assist work with bookmakers and, whatever he says, wise guys, but that they were opened as a device for another purpose.

Mr. Rosenblum: Not for that alone. I say one

of the reasons for which it was used. Also, I won't agree with Mr. Hallinan's statement that these accounts were opened with the knowledge of Mr. Miller, that they were so-called stiff or phony accounts.

The Court: That will come down to a conclusion we draw from the record.

(225) Mr. Rosenblum: That is right. That will be the ultimate fact.

The Court: The only question I am trying to figure out now is what relevance the National Safety situation has. In other words, whether he was using these for one improper purpose or another is of any significance in this case and what the actual purposes were. I will allow the examination on the question of the National Safety account in so far as it is on the stiff accounts allegedly opened in the Pennsylvania Exchange Bank. I mean, in so far as it bears upon the financial transactions thereby represented. But I don't want to get off into it any further than we have gone as to prior vicious and immoral acts. In other words, I don't want to start showing parallels as we discussed this morning.

Mr. Rosenblum: You don't want us to show that Mishel may have done the same thing in a number of other banks?

The Court: That is right, for the reasons that I gave you this morning, subject to your further research and your giving me a more detailed offer of proof.

(The following proceedings took place in open court in the presence of the jury.)

(226) By Mr. Rosenblum:

Q. Mr. Mishel, without going into details, see if you can answer these yes or no: Did you have any so-called stiff accounts in the Modern Industrial Bank?

Mr. Hailinan: I will object to this question, your Honor.

The Court: Well, may I see you at the bench for a minute?

(The following proceedings took place at the bench outside of the hearing of the jury.)

Mr. Rosenblum: The testimony on his direct was as though it was sinister, the fact that when he said he obtained these signature cards from Mr. Miller, as proof that these cards could be obtained in these other banks and they were obtained from other banks and opened accounts in them and could be readily usable.

The Court: I sustain the objection on that.

Mr. Rosenblum: In other words, our offer of proof shows that we are trying to establish, that is, one of the things we are trying to establish is the fact that he opened accounts of this kind in Modern Industrial Bank.

Mr. Perry: There were four or five.

(227) The Court: If one hundred other banks followed the practice of stiff accounts I don't think that has any bearing on the issue in this case.

Mr. Rosenblum: No, no. You are assuming that now. Just like you are——

The Court: I don't know anything about that. You are not going to draw that out to find out——

Mr. Perry: But you can show a practice, your Honor.

Mr. Rosenblum: And the ease with which he was able to get these cards so that he could open these accounts without the bank knowing.

The Court: No. I won't get off into a number of independent banks in that respect. I will sustain the objection.

Mr. Rosenblum: Exception.

(The following proceedings took place in the hearing of the jury.)

Q. Now, you testified yesterday with reference to your having knowledge of stolen bonds which later were referred to as bonds in the name of the Chernoff family. Do you recall that? A. Yes, sir.

Q. I think you testified to that on your direct (228) examination. Do you remember? A. Yes, sir.

Q. Now, can you tell us how you learned of the existence of those bonds? A. I learned of the existence of those bonds through Frank Pace and Mickey Rosenberg.

Q. They both told you about it? A. Well, Mickey told me that there was some hot bonds to be gotten, and when we met Mickey, I and Frank Pace, he showed me the bonds in the name of Chernoff.

Q. So that you say that you first heard about these bonds from Rosenberg? A. And Pace.

Q. Well, which one was it? Did you learn it from both at the same time? A. I don't know which one came first, but I know I learned it through them that these bonds were available.

Q. Where was it that you learned of this? A. Originally it was on a loft just west of Broadway, on 42nd Street, that I had met Frank Pace and Mickey Rosenberg. Mickey Rosenberg took me to meet Pace and he told me some kind of story about he had some bonds over in Jersey that were stolen and that the fellow that stole them was in jail but he would be able to (229) get them and it never

came about that he got them. A little while afterwards Mickey called up. He said, "Listen, we got to meet Frank Pace down on Prince Street, Prince and Thompson Street." There I met him and he told me had some bonds, he showed me bonds, and that is where I got——

Q. So that the fact is that you learned it from what you just said from Rosenberg? A. And Frank Pace.

Q. First you heard it from Rosenberg? Will you answer that yes or no? A. Yes, I learned it from Rosenberg and Pace.

Q. Will you tell us whether or not it is your testimony that you learned it from Rosenberg and Pace at the same time, at the very same time? A. Well, I learned from Rosenberg that there were some bonds, and the name of the bonds I saw myself when I met Pace in this little cafe on the corner of Prince and Thompson Street.

Q. So that you first heard of the hot bonds from Rosenberg and later you got the name when you say you and Rosenberg met Pace? A. That is right.

Q. How long had you known Pace? (229a) A. A short time, maybe three months or so. I met Pace through somebody else also, a fellow named Lewis.

Q. Go ahead. A fellow by the name of— A. Louis Leone.

(230) Q. Louis Leone? A. Yes.

Q. And can you tell us when you met Pace with Rosenberg? That is, when you and Rosenberg met Pace as you described to us a few moments ago. A. I met him sometime in September of this year or maybe a little before the year, 1949. You see, there was a meet made by this fellow, Louis Leone, who had a florist up in the north end of the Bronx. He arranged a meet with Pace for me and Mickey Rosenberg because this Louis Leone's brother—I don't know his first name— and Frank Pace were booking horses on 37th Street and Broadway. They have a cigar stand in the building on the northwest corner of 37th Street and Broadway.

Q. Can you help us? You said it was either in September or a little before when you met Pace? A. Some time before the Chernoff bonds I met Pace.

Q. I think you fixed the date as September or a little before. A. I could be wrong on the date, but I can't be wrong that I got them through Pace.

Q. And you say that your best recollection would (231) be that it was either about September or a little earlier? A. Some time. I just can't recall exactly when I met him, but I know I met him and we discussed it, and I told him I would have to show them to my man, if he likes them, okay.

Q. Are you sure it wasn't five months before September 1949? A. I can't say when it was.

Q. It might even have been before that. Isn't that so? A. I don't think so, but——

Q. Would you say it isn't? A. I can't say yes or no because I am not sure. I remember meeting him, but exactly when in 1949 I don't know, but I did meet him in 1949.

Q. Is it because of the lapse of time that you say you can't give us a more exact date? A. I just can't remember. I have been in jail close to four years, and jail seems to change your outlook of time—not fact, but time seems to flee.

Q. The fact of time, does that change too? A. Fact don't change, but time seems to change.

(232) Q. The fact is you met a person at a certain time? A. I met him. I know I met him in Cavalier's Restaurant at one time too.

Q. Would you say it might have been in 1948? A. I don't think so. I think it was in 1949.

Q. You said before that between the time of your conviction in 1945 and the time when you learned of the Chernoff bonds, you may have been committing crimes in connection with some checks, right, but had you been com-

mitting crimes in connection with any stolen bonds or forged bonds? A. I think there were some stolen bonds that were——

Q. When? A. Just about that same period. Whether it was a little before it or a little after, I can't remember. I think it was before that there was a $5000 negotiable bond. I couldn't be sure of the exact date.

Q. Did you push that one? A. Well, I caused it to be pushed, as you phrase it.

Q. And was that in New York City? (233) A. That was at the Pennsylvania Exchange Bank.

Q. What did the Pennsylvania Exchange Bank have to do with it? A. Shall I describe the details?

Q. Tell me. I asked the question. First, whom did you talk with about that bond? A. Mr. Miller. I called him on the phone. I says, "Hello, Jim." I says, "I got a $5000 negotiable bearer bond, coupon bond. I would like to get it cashed." He says, "What's the story with it?" I said, "It is a little bit long." He says, "Give me the numbers on it and I will call you back." So I gave him some numbers of the bonds. Each coupon had the same number. There were 12 or 14 numbers, one after each other. He called me back at the office and he says, "All right, send it over and I will see that it is cashed for you." So I called Sam Siegel into my office—he was one of my messenger boys—and I says, "Take this over to the bank and give it to Mr. Miller. And Mr. Miller if he is not in said give it to Mr. Littlefield and he will take care of it for you."

I sent over this $5000 negotiable bond (234) to the bank, and about 15 or 20 minutes later, Sam called me up. He said, "Listen, Littlefield knows all about this, but you won't get the money until the next day." I says, "All right, leave it there and come on back." The next day the kid went and picked up about $5040 or something around that.

Q. Were these discussions with Mr. Miller or with Mr. Littlefield? A. These discussions were with Miller.

Q. Not with Littlefield? A. What Sam had discussed with Littlefield, I don't know.

Q. What discussions had you ~~been~~ having with Littlefield? A. I have seen him from time to time, but I had no dealings with him whatsoever. I never had more than, "Good morning, good evening," with him practically.

Q. You are sure you had no dealings with him whatsoever? A. Well, I can't recall any specific dealings other than making a deposit, or he would call me up and say one of the accounts is short or one of the (235) checks is coming back, or something of that sort.

Q. Isn't it a fact that this deal you have just described was with Littlefield that you are now trying to stick on Miller? A. No, that is not so. In fact, I paid Mr. Miller for that deal after it was consummated and completed, and I didn't know the name or anything about that deal, and when I decided to make a clean breast of things, I told Mr. Malinky of the FBI and several other officers that a $5000 bond went through. The name I did not know. They dug up, I understand, what bond and what name, and I understand the account that was used was the 1937 account, a name that I had never at any time known because I had nothing to do with the bank then.

Q. You say that the bond was negotiable? A. That is right.

Q. Where did the name appear? A. There was no name on the bond as I remember it. The way it said was "Bearer."

Q. What is the name you were just telling the jury about in connection with this $5000 bond? A. When they cashed the bond, they had to use (236) a name for the cashing purposes.

Irving Mishel—for Government—Cross

Q. They had to use a name for the cashing purposes? A. That is right.

Q. Did you have that dealing with Mr. Littlefield? A. No, sir.

Q. Did you have any dealings with Mr. Littlefield in connection with opening some of these accounts that you called stiffs? A. Dealings with Mr. Littlefield? Not that I remember. I could have, but I don't recall ever having any.

Q. You say you could have? Would you say you did or you did not? A. I didn't recall ever having any because I took all my business to Mr. Miller. He was the president of the bank, and him and I were pretty close, so whenever I wanted something done, I walked up to his desk, which was practically daily, and I would sit down and he would get it done. I had no reason to go to Littlefield.

Q. Did you know, Mr. Mishel, whether Mr. Littlefield was fired from the Pennsylvania Exchange Bank?

* * * *

The Court: All right, we will take a brief recess.

(Short recess.)

Mr. Hallinan: Your Honor, I don't think I did, but I also wanted to note an objection to the last question on the grounds of relevancy.

The Court: I will sustain that objection.

Mr. Rosenblum: To the last question?

The Court: Yes.

Mr. Rosenblum: Exception.

The Court: Bring the jury in.

(Jury in box.)

IRVING MISHEL resumed.

By Mr. Rosenblum:

Q. Do you know, Mr. Mishel, whether Mr. Littlefield is alive or dead?

Mr. Hallinan: I object to that. I don't (239) think that has any relevancy either.

The Court: I will take it.

A. I believe he is dead. I heard anyway.

Q. I think you said Gallagher is dead? A. I heard that too.

Irving Mishel—for Government—Cross

Q. And Kennedy is dead? A. I heard that also.

Q. Can you tell us whether one of the accounts you referred to yesterday was an account named Sam Marco? A. Yes.

Q. Can you tell us whether that was opened on or about December 28, 1948? A. It was opened. I don't know exactly when it was opened. It was opened.

Q. Can you tell us whether it was opened by R. H. Littlefield? A. All I know is it was opened. I don't know who opened it.

Q. Can you tell us whether or not you know whether it was opened by R. H. Littlefield? A. I don't know.

Q. Did you open that account? A. It was one of our stiff accounts.

(240) Q. Did you send down one of these signature cards? A. I did.

Q. Did you ever get signature cards from any other bank?

Mr. Hallinan: I will object to this.

The Court: Objection sustained.

Q. Did you have difficulty in getting signature cards?

Mr. Hallinan: Is he limiting that to the——

Mr. Rosenblum: As a general practice.

The Court: No. We are not going to establish general practice. You may ask about this.

Q. Can you tell us whether or not anyone could go into the Pennsylvania Exchange Bank and get a signature card? A. I don't know.

Q. Then when you say you opened an account, you

Q. And that was what opened the account, right? A. That and a deposit opened the account.

Q. In the case of Marco, did it open with $200, do you know? (241) A. I don't know how much it was opened with.

Q. When did you open the Abe Katz account? A. I don't remember too much about the Abe Katz account.

Q. You testified yesterday that you remembered it. A. I remember the account. It was one of the accounts we used. I didn't say I opened it personally. The accounts I opened personally was the Thomas Young, John Case, Sam Marco, Jack Fineman, Frank Williams. Those I know were opened by me or through me, I should say.

Q. Weren't all these accounts that you testified about yesterday opened through you or by you? A. Not exactly. Some of them were used by some other people, who were associated with us in the check-cashing business.

Q. Yesterday you testified about opening an account in the name of Abe Katz. Will you give us what you want us to know about that account?

Mr. Hallinan: I object to the form of that, your Honor.

Mr. Rosenblum: I will change the form.

Q. Do you recall that you yesterday testified (242) at page 85:

"Q. Did you thereafter open various stiff accounts? A. I did."

A. I recall that.

Q. Did that include Abe Katz? A. That included Abe Katz, but there has to be an answer to it.

Q. Did that include Abe Katz? A. Yes, sir.

Q. Did that include John Whitman? A. Yes, sir.

Q. And you say that you opened these two accounts, Abe Katz, John Whitman, at the Pennsylvania Exchange

Bank? A. Those accounts were opened. They were stiff accounts. They were opened by an associate of mine, who was partners with us in this check-cashing business at 152 West 38th Street. We had a cigar store, and there was quite a few people interested in the place. It could have been one of them that had the account opened. All I said if I didn't make myself clear was that the name John Whitman or Abe Katz was used on numerous occasions for kiting checks, cashing checks (243) and so forth.

Q. In other words, these two were not stiff accounts? A. They are stiff accounts.

Q. You say you used them only for the purpose you just gave. Weren't the other accounts used for that purpose? A. They are stiff accounts.

Q. Were the others used for the same purpose you just gave? A. They all are stiff accounts.

Q. Why do you differentiate between the Katz and the Whitman accounts and the other accounts you referred to? A. Because the other accounts, people who were associated with me in my office did the signing of them. These accounts, somebody else did the signing of, not in my office.

Q. What do you mean did the signing of? A. Of the phoney name.

Q. You mean someone else wrote the phoney names John Whitman and Abe Katz? Is that what you mean? A. Yes, not somebody that was connected with me, like Sam Siegel or Sidney Hack or Norton Schnabel.

(244) Q. How was Sidney Hack connected with this? A. Him and I were partners in the Mishel Wine and Liquor Corporation.

Q. You were partners? A. Yes, sir.

Q. You? A. I was the silent partner. My wife was the partner.

Q. Which was it? A. Same thing.

Q. Did the State Liquor Authority know you were the partner? A. The State Liquor Authority knew that I was in Berkshire Wine & Liquor Corporation.

Q. Did they know you were the partner in Mishel Wine and Liquor Company? A. Did the State Liquor Authority? I don't know.

Q. Did you put it in the application? A. I didn't put the application in.

Q. Did you sign the application? A. I at one time signed an application for a license and was granted a license.

Q. Later on? A. When I bought the store, it was bought in the (245) name of Berkshire Wine & Liquor Company, which was a partnership between me and a fellow named George Zeller. Thereafter, I bought Zeller out, and at the same time I had gone into this finance business. So my lawyers told me that in order for me to be in the finance business, I had to disinterest myself from any liquor stores because we were lending money on legitimate loans to bars and grills, and they have a law in this State that you can only have one interest in a liquor store, and if you have an interest in a liquor store, you can't have any outside interests. But it didn't stop my wife from doing it, so I transferred my assets, equity, whatever you call it, to Mrs. Mishel.

Q. These other accounts like Thomas Young, did you sign the name "Thomas Young" on the signature card? A. I told you, Sidney Hack signed that name.

Q. Who signed the name "A. Katz"? A. I don't know.

Q. Was Abe Katz's account under the control, whether it's a person outside your office or in your office, who signed it, of you? A. Yes, it was.

Q. Did you give Mr. Miller $150 a month on the Abe Katz account? (246) A. On any accounts that were opened after that, he got $150 a month.

Irving Mishel—for Government—Cross

Q. Did you give him the $150 on the Abe Katz account? A. I can't say. I don't know if that was in that bank, but any accounts that were in that bank, that we opened, I gave him what he agreed to collect. The ones I am sure of are Sam Marco, I would say maybe $700,000 or $800,000 worth of checks went through the Sam Marco account. Sam Siegel, one of the boys who worked for me, was the one who signed that. John Case, Thomas Young, I am sure of. Jack Feinman I believe was in that ban.

Q. Do you have some doubt? A. No, I believe that it was in that bank. I can't be sure. We had so many accounts there that it is hard to remember them.

Q. Yesterday did you say you weren't sure when you gave some of these names? A. No, I didn't say it. I am still saying the same thing, that so far as Thomas Young, John Case, those accounts stick out in my mind.

Q. You say that you gave Mr. Miller $150 a month in connection with the stiff accounts? A. That is right.

(247) Q. Would that also apply to accounts not in that bank? A. I wasn't talking about that.

Q. Will you answer my question, please? Would that $150 apply to accounts which were not in that bank? A. Only accounts that I was talking about that were in that bank.

Q. And you said yesterday when you first testified about giving him $150 a month in connection with those accounts, you then said that the Abe Katz account was in the bank. A. I believe it was. I am not positive of that, but the other accounts I know were in that bank.

Q. Did you say yesterday that you believe so or you mentioned the names of the accounts which you called stiff accounts in the Pennsylvania Exchange Bank? A. I mentioned the names, but I could be mistaken in one name. It could be another bank. We had so many stiff accounts in the Penn Bank.

Irving Mishel—for Government—Cross

Q. You could be mistaken about your testimony, can't you? A. Just about that.

Mr. Hallinan: I object to that.
The Court: I will let that stand.

(248) Q. Is that the only thing you could be mistaken about?

Mr. Hallinan: I will object to this. It is argumentative. He can put direct questions to the witness.
The Court: All right, I will sustain the objection.
Mr. Rosenblum: Exception.

Q. How about John Whitman? A. That was a stiff account.

Q. In the Pennsylvania Exchange Bank? A. I don't know for sure if it was in the Pennsylvania Exchange Bank or not. All I know is it was a stiff account.

Q. You say that your answers are the same as to that, that when you testified yesterday, you did not differentiate as you are doing right now? A. Well, maybe I was misunderstood.

Q. You were misunderstood? A. They asked me names of some stiff accounts. That is what I thought he asked me, anyhow.

Q. Do you recall that you were testifying yesterday with reference to the opening of what you referred to as stiff accounts in the Pennsylvania Exchange Bank, and do you recall th[illegible]he question at Page 86 was put to you:

(249) "Q. Can you recall the names of some of those stiff accounts? A. I could try—John Case, Sam Marco, Thomas Young, Abe Katz, John Whitman, Jack Fienman, Thomas Young, J. H. Newman."

Irving Mishel—for Government—Cross

Weren't you giving that yesterday as the accounts which you swore were being opened in the Pensylvania Exchange Bank? A. I misunderstood the question maybe. The ones I am positive about are——

Q. You misunderstood the question. Now, you said that you were told by Mr. Miller to open two accounts, one in the early letters of the alphabet and the other in the last letters of the alphabet. Do you remember that? A. I do.

Q. Do you remember then you referred to John Case and Thomas Young? Case is at the beginning of the alphabet, right? A. That is right.

Q. Young is near the end? A. That is right.

Q. Tell us where Marco is. A. Marco is in the middle.

Q. Right in the middle, isn't it? (250) A. That is right, but Thomas Young——

Q. Tell me what other account balanced off the Marco account. A. None balanced it off at that time because that was the one that was opened.

Q. Tell us about the Newman account. Is that right in the middle, too, "N"? A. I don't recall the Newman account, the details of that. The reason I recall the name of the Case and Young accounts is that they both were opened on the same day with two deposits together, and I think your records will reflect that.

Q. How about the others? By the way, did you go over these records that were made available to you either by Mr. Hallinan or Mr. Milenky? A. The only thing I can say is the Government, Mr. Milenky and everybody else, told me just tell the truth——

Q. Answer my question, please. The question is: Were the bank records and answer that yes or no if you ca - concerning these accounts made available to you before you testified, whether it be a day, week, month, a year or three years ago? A. Yes.

(251) Q. Do you still say that Mr. Miller told you that the accounts have to be opened either at the beginning of the alphabet and at the end of the alphabet? Is that right? A. On this occasion when these two accounts were opened he told me to open them that way, and that is why they were opened together, one in the C and one toward the end.

Q. Is it your testimony now, then, that that only applied to those two and didn't apply to Newman or Feinman or Katz or Williams or Marco or any of the others that were referred to? A. That incident with the John Case and the Thomas Young accounts sticks out in my mind because Sidney Hack signed the two of them together at the same time and they were put through that way, and they lasted a few months, and that was the end of that account.

Q. You told us yesterday about an occasion when you say you were talking with Gallagher, do you recall testifying about it? A. Yes, sir.

Q. Now, tell us, please, think back if you can and give us as positive a date as you can. A. This was in 1946 or 1947.

(252) Q. Not 1948? A. It could have been 1948.

Q. Or 1949? A. I don't think so. It was before that.

Q. You don't think it was possible? A. No.

Q. In other words, your answer then is it could be 1946, 1947, 1948 or 1949? A. No. My answer is 1946 or 1947, possibly the beginning of 1948.

Q. Can't you give us a closer date than a spread of the three years you refer to? A. I can't give you a closer date because I just don't remember exactly when. All I know is I remember the conversation, but exactly when it took place I can't remember.

Q. Is it because the conversation never took place? A. No; it took place.

Q. Then can't you try by either association with some particular things give us a time as to when you say this

conversation with Gallagher took place? A. I just can't pin-point it to a date, but——

Q. Not a day, not a week, pin-point it to a month?

(253) Pin-point it to a year. A. I would like to know when I first opened my account in that bank and I may be able to pin-point it that way.

Q. Would you say that it was the time when you first opened your accounts? A. About that time, maybe a year later, I don't recall exactly. All I know is I had——

Q. Maybe two years later? A. I don't think so.

Q. You don't think so. A. All I do know is I had that conversation.

Q. When you came into the room to see Gallagher, Gallagher and Miller were sitting there? A. No. I believe Mr. Miller walked in while Mr. Gallagher and me were talking.

Q. You say that you remember that detail, that you recall you were speaking to Mr. Gallagher and Mr. Miller walked in; that you recall? A. I recall it because what he said. That is why I recall it.

Q. But do you have a definite recollection of it? A. That is right.

Q. That you recall? A. That is right.

(254) Q. Will you tell us again just what was said at that time—or I will withdraw it.

First tell me, was that the first time you saw Gallagher? A. No. I seen him around that time. I was introduced to him by some people that knew him that I knew.

Q. And about that time, what date would you say you were introduced to him? A. I don't remember. It was quite some years ago.

Q. Well, it goes back to about nine or ten years, doesn't it? A. No. It could go—what is this, 1956?

Q. Eleven? A. No.

Q. Eight? Seven? A. Sometime between 1946 and 1948, somewheres in that period of time.

Irving Mishel—for Government—Cross

Q. Will you tell us, please, whether or not you had an appointment to meet Mr. Miller there that day? A. No, I don't recall whether I did or I didn't. All I recall is this conversation that took place.

Q. What part of the conversation made reference to the fact that Miller had just come into the room? (255) A. I don't recall the substance of when he came in, he was going out. All I recall is the conversation.

Q. You said that what was said in that conversation fixed in your mind the fact that he came into the room and wasn't there when you came in?

Mr. Hallinan: No, he didn't say that, your Honor.

The Court: I don't believe so.

Mr. Hallinan: I will object to the form of the question.

The Court: I will sustain it as to form.

Q. Tell us what was said. What did Gallagher say? A. Mr. Gallagher said, "Look here, Jim, this Mishel is with good people, and do what you can for him, do everything he wants here." And, he said, "You can go along with him and do anything he wants, whether it be legal or illegal," or words to that effect. He says, "I know his connections and I know the people he is with."

So Mr. Miller says, "O. K. Bill. I will take care of it." You see, that sticks out in my mind. But the time element doesn't.

(256) Q. Do you remember yesterday that Miller allegedly said, "All right, Bill, I will take care of it."? A. Words acknowledging it.

Q. And then did he walk out? A. He may have stayed for a few minutes or he may have just walked out right after that.

Q. Did you continue to sit there? A. I don't recall

whether I stood there for three minutes or half an hour or went to lunch with Mr. Gallagher; I don't know.

Q. I think you testified yesterday—I withdraw that. Oh, yes, I think you testified yesterday that you said Mr. Miller told you, that is, in connection with the accounts you refer to as the stiff accounts, that you would run it for a short time, close one off and then start another one; is that correct? A. Correct.

Q. Isn't it a fact you had four of those accounts running at one time? A. That is right. I don't know how many, but we had some I mean at one time because we had too much going through them.

Q. So that it wasn't as you said before, that you ran for a short time and then opened another one? (257) A. Yes, we did run them and close them, run them and close them.

Q. In other words, then, you kept some opened when you opened another, other ones? A. Yes, it was up to his discretion, not mine. We did what he told us to do. If he told us to close it we closed it; if he said to keep that open we kept that open.

Q. In other words, he told you what to do? A. That is right. He was the banker; I am not.

Q. Now, you recall a few minutes ago, maybe a few hours ago, you testified that after you got the Chernoff bonds you then—withdraw that.

By the time you had the Chernoff bonds, was this after you had had the talk with Gallagher? A. Oh, yes.

Q. And after he had told you, you say, he had told Miller in your presence, "Go ahead and do everything and anything?" A. Oh, yes.

(258) Q. Regardless of whether it was legal or illegal? A. That is right.

Q. Right? A. Correct.

Q. And you knew that all you had to do was to look

to Miller to put things through, is that right? A. Look to Miller to make a deal, if the deal was satisfactory to everybody concerned, okay.

Q. Now in connection with the cashing of the Chernoff bonds, was there any reason why you had to pick a particular person to sign the name of Chernoff? A. Well, Mickey happened to be available. Mickey just happened to be one who was available.

Q. Well, weren't you always available? A. I was available but I never signed them.

Q. You said you didn't sign them. But you were available to sign them; right? A. Right.

Q. You didn't anticipate any trouble with Miller at the bank, did you? A. I didn't have any trouble.

Q. And still you didn't sign them, did you? A. No, I didn't.

(259) Q. You said you had—in fact, when you wanted them to be signed that, first, Rosenberg wasn't available, was he? A. No, he was available. I called him up and we met.

Q. You made a date to meet him? A. That is right. I used to take him home every night; we used to go running around together.

Q. Will you tell us why you needed Rosenberg to do it? A. Don't ask me. I just used Rosenberg.

Q. I am asking you. So, if you don't mind, please tell us. A. I answered that I used Rosenberg. He signed them.

Q. In connection with six or seven other transactions did you also in each instance use another person other than yourself in signing instruments which you pushed through different banks?

Mr. Hallinan: I object to the form of the question. I think it is much too broad. I think it may

be skirting on the area we had discussed before, so I might request that it be more specific.

(260) The Court: Did you mean to limit that to this particular bank?

Mr. Rosenblum: No.

Mr. Hallinan: I will object.

The Court: I will sustain the objection unless it is so limited.

Mr. Rosenblum: Later I can give you my reasons.

Q. Did you ever, yourself, sign any forged or stolen instrument that you put through? A. I may have.

Q. Which? A. I just don't recall. I may have signed the last one of this Chernoff series. I just don't recall.

Q. But you did sign one in the Chernoff? A. I may have.

Mr. Hallinan: I object to this. He is misstating the witness's testimony.

The Court: The witness has straightened it out.

Q. You say you may have signed, is that right? A. I may have.

Q. Was there any reason why you didn't sign any (261) of the others? A. I don't know. Just that is the way it was done.

Q. You say only because that is the way it was done? A. Just happened to be the way it worked out I didn't sign them. If I signed something I would admit it. No reason to deny it.

Q. Tell me, on this deal on the $6684.50 that you said Miller was supposed to get 10 per cent, how much was Pace supposed to get? A. Pace got paid for his bonds.

Q. How much? A. I think it was either 10 or 15 per

cent of the face value, which was about eight or nine thousand dollars, the face value was.

Q. Can you tell us how much Rosenberg was supposed to get, if he got anything?

Mr. Hallinan: I object to this question. I should have objected to the other one. That is, on the ground of relevancy. How much other people got for the bonds I don't see the relevancy of that to this false statement case.

The Court: I will take it. Overruled.

(262) A. What was the last question?

Q. How much did Rosenberg get? A. I think Rosenberg got about 10 or 15 per cent of the proceeds, the net proceeds.

Q. What percentage did you get? A. About 10 or 15 per cent.

Q. So you had three people who got 10 or 15 per cent. Who got the rest? Four people. Now Miller you said got 10 per cent, you got 10 or 15, Pace got 10 or 15, Rosenberg got 10 or 15? A. I had a partner.

Q. What is that? A. I had a partner.

Q. You had a partner? A. Yes, sir. Who got a piece of it?

Q. Who was that? A. A fellow named Nitzberg.

Q. Nitzberg got a piece of it? A. That is right.

Q. And in connection with the plea you made to Judge Joseph in the Bronx, did you tell him that you set up Nitzberg? Do you remember? A. What?

Q. Did you set up Nitzberg?

(263) Mr. Hallinan: I object to this question. I don't see how, on the face of the question, it relates to the——

The Court: Objection sustained.

Mr. Rosenblum: It is the interest I want to show of this witness.

The Court: I don't think we have to go into his conversation with Judge Joseph in that respect.

Mr. Rosenblum: Exception.

Q. Now, how much did he get? A. 10 or 15 or 20 per cent. We split the money down between us all.

Q. When did you sit down, and tell us the first occassion when you got, you said, eight hundred-odd dollars after the first bond was cashed—do you remember that? A. Yes.

Q. Do you recall that? A. Right.

Q. By the way, do you recall which of the tellers cashed that bond? A. I don't know.

Q. Do you know the tellers there? A. They knew me; I don't know them.

(264) Q. You don't know them at all? A. "Hello" and "Good-bye." I would know them if I saw them, maybe I would recognize them.

Q. That was the only contact? A. "Hello" and "Good-bye."

Q. The only way you knew them, is that right? A. As a normal depositor would know them, maybe a little more, even, than the normal depositor, or I may have known them a little better, but that is all, "Hello" and "Good-bye."

Q. When you say the first one was cashed and you say Mr. Miller gave you eight hundred-odd dollars, I think it was $840, you say you gave Mr. Miller $100? A. Correct.

Q. Tell me, when did you meet with the others to split it down the middle? A. When it was cashed we straightened it out.

Q. The same day? A. No. Listen, we were doing busi-

ness in hundreds of thousands in the check-cashing business, so whenever we got around to it, if some money was due you I would pay you, if money was due this gentleman we paid him, whatever was due to anybody we give him, we cut it up, and that was the end of it.

(265) Q. Did you do it each time after you got a bond cashed? A. I don't recall whether we did it each time or at the end of it. But, in any event, Frank Pace, his money, he was paid right away.

Q. Who paid that? A. Oh, I gave him the money; I met him the next day and gave him money.

Q. How much did you give him? A. 10 or 15 per cent of the face value, whatever that came to, that is what we gave him.

Q. I show you Government's Exhibit 1-A for identification.

Mr. Hallinan: In evidence.

Mr. Rosenblum: Is it in evidence? Yes.

Q. (Continuing) In evidence, and ask you where that name Nat Chernoff was put on that document? A. Vault room or the private cubbyhole of the Pennsylvania Exchange Bank.

Q. Vault room or the private cubbyhole? A. They call it, I don't know what you call it, it is a little room. If I may point it here, I think I could point it out for you.

(266) Q. Would you, please? Was it near Mr. Miller's desk? A. (Witness goes to diagram.) Right here, it was two small private rooms. One of these rooms just about the size of a closet. Mickey was sitting down, he signed—he resigned the bond, and at that time he signed some of these on the proper line.

Q. Is that the place where he wrote this? A. Yes.

Q. You are positive of that? A. Yes, sir.

Q. How about 2, which is in evidence? A. The same thing, the same place.

Q. How about 3? A. No. 3 was signed, the top signature, where it says "Print name"——

Q. Yes? A. —was signed at the time that the Chernoff bonds were signed Nat Chernoff in the office at 570 Seventh Avenue.

Q. When? A. That morning of the cashing of these bonds.

Q. When you say these bonds— A. None of these bonds—the morning of the (267) cashing of the original bond.

Q. How would you fix that date? A. The date of the first bond.

Q. In other words, at that date, if the date of the redemption form is December 29, 1949, you say that that was the day when Rosenberg filled in, signed his name on this redemption form? A. I would say around that—this one here, he signed this one here.

Q. When you say "this one here," you are referring to 3-A in evidence? A. These stamps weren't on. All that was signed was the name Nat Chernoff. Some of them were signed in the wrong line, so Rosenberg came back to the bank, from my office at 570 Seventh Avenue, and resigned the name Nat Chernoff on the proper line. And one bond he took one of these slips and signed the name Blanche Chernoff because there was none signed Blanche. I think you have that some place.

Q. Going right to the Blanche Chernoff one, this one here which was Exhibit 7-A, when do you say that one was signed?

Mr. Hallinan: Just a minute. That does not represent the last one. 8-A would represent the (268) last one on your question.

Mr. Rosenblum: My question referred to the one that has the name Blanche Chernoff.

Mr. Hallinan: I am sorry. I misunderstood. I thought you referred to the last bond that was cashed.

A. This was signed at the same time that the name Nat Chernoff was corrected in the cubbyhole of the bank.

Q. Who signed Blanche Chernoff? A. Mickey Rosenberg signed Blanche Chernoff.

Q. So that these seven you say were signed either the night before the cashing of the first bond?

Mr. Hallinan: No.

A. No, no.

Mr. Hallinan: That was not the testimony.

Q. All right. You tell us when those were signed where there was any correction. A. Where there was any correction they were signed on the morning of the cashing.

Q. On the morning? A. The morning of the cashing, because I had a whole pad of these with the gum side to it. They looked like that on a pad, just like that yellow pad (269) that you are using, and took one off. He signed on the top line Nat Chernoff. Signed another one Nat Chernoff. When I come to the bank I was told that they were signed in the wrong place. So he resigned the name Nat Chernoff on the second line on some of them. Some of them he wrote the name Nat Chernoff on over again. On one of them he wrote the name Blanche Chernoff. The last one I believe I or Sam Siegel signed it.

Q. When do you say that the one with the name Blanche Chernoff was signed? A. I believe at the same time that all the rest of them were signed.

Q. That would be the morning of the day when you say the first bond was cashed? A. I believe so.

Q. When you say all—outside of the last one, seven other forms—the seven other bond redemption forms, were all signed you say on the morning that the first bond was cashed? A. I know that most of them were signed on that morning, but whether the last one, this one here of Blanche Chernoff, was signed that morning or not I can't be positive, but I am positive that Mickey Rosenberg (270) did sign the name Blanche Chernoff.

Q. Where did he sign it? A. In this vault room of the bank. Now, whether——

Q. Do you remember going in there twice with him? A. He was in there 50 times with me, not twice.

Q. In connection with these bonds? A. No, no. We had other dealings that I went to the bank for. I had deposits, sometimes I had to count out the money. I can't stand in the corner and count out the money. So I would walk in there to count it out. Sometimes some of that money would have to go to 38th Street, sometimes some of that money would be going to a bookmaker, part would have to go some place else. So naturally I used that room; I had access to it.

Q. Did you have a safe-deposit box there? A. I did.

Q. Did you have two boxes there? A. I did.

Q. And in what names were those boxes?

Mr. Hallinan: I object to this. I don't know what relevancy this has, your Honor.

The Court: Well, unless you can show some (271) prejudice I am going to let it in, if that is the only objection.

Mr. Hallinan: I have no serious objection.

The Court: Overruled.

Q. Tell us, in what names did you have those two boxes? Tell us, please. A. I know I had a box, I don't

know if it was just Irving or Irving and Helen Mishel. Then we had another box in a phoney name. I believe the name was Robert Benson, something very similar to that. Robert Benson I think it was.

Q. That is the second box you believe was in the name of Robert Benson? A. I believe so.

Q. Is that right? A. That is right.

Q. And the first one was either in the name Irving Mishel or Irving and Helen Mishel? A. Something like that.

Q. Is that right? A. Or it may have been in my name, but my wife had access to it.

Q. I see. And the second one you say was in the name that you believe to be Robert Benson? (272) A. Something like that.

Q. Was it in the same vault in the same bank? A. It was in the same vault but in a different compartment or different area.

Q. Was it within the same safe deposit box, same safe deposit vault? A. It was in the same room or cubbyhole, whatever you call it. But it was in there.

Q. And was it at the 48th Street branch? A. Yes, sir.

Q. Not at the 38th? A. 48th.

Q. Both of them were there? A. Yes, 48th Street branch.

Q. And did you ever open up and empty out the box in the name Irving or Helen or Irving and Helen Mishel? A. No, it was still some stuff in that box.

Q. Never opened? A. I understand that the sheriff's office or somebody has that stuff. There is stuff still in the box.

Q. That is, it wasn't opened in your presence and turned over to the sheriff? A. I don't know. It may have been opened in (273) my presence; I don't recall: it was a long time ago.

Q. Think about it, please. Was this any longer than some of the things you have testified about, going back to 1946 or 1947? A. That didn't interest me.

Mr. Hallinan: I object to that statement and move to strike it out.

The Court: All right. Sustained.

Q. When was it that this box was opened in either your name alone or your wife's name alone or in both of your names? A. I can't just place the time.

Q. Can you give us an approximate idea? A. I just can't place the time.

Q. Would you say it goes back as far as '46 or 1947? A. Oh no, it is later than that.

Q. Would it be within the last three years? A. No.

Q. Before that? A. I would say that took place in the end of 1950 or 1951 or 1952 it took place.

Q. Now go back for a moment to the Robert Benson (274) safe deposit box. Did you empty that? A. No.

Q. Did you have a key to it? Yes.

Q. Did you ever go to the bank and demand the right to open that box? I did.

Q. Was that in the presence of some public official or some person connected with the law? A. It was.

Q. And whose box was that? A. That was one of the fictitious names.

Q. Whose box was it? A. Mine.

Q. Can you tell us whether or not when you came back to open that box with someone who was connected with the authorities or the law was after or before you opened the other box?

Mr. Hallinan: I object again. I did object on the grounds of relevancy and said that I had no serious objection, but I would press the objection now. I don't see what relevancy it has.

The Court: I will overrule it. Go ahead.

A. I don't remember exactly with who I went.

(275) Q. You aren't sure as to the time? A. I can't place this time.

Q. You recall there was an occasion that you went there? A. I just don't remember the facts about it.

Q. Do you remember there was a bank examiner there at the time? A. I don't remember who was there.

Q. Did you open the box at that time? A. I don't remember.

Q. Do you remember claiming that your box was moved out by Mr. Miller? A. I remember claiming that something was wrong with that bank, yes.

Q. Do you remember claiming that the entire line of boxes— A. No, I didn't claim that.

Q. —in which you said the number of your particular box appeared was removed by Mr. Miller? A. I remember claiming that the numbers 430 some-odd, I am just taking a figure that——

Q. Yes, we realize it is not the exact figure but you are taking that as an example. A. I remember claiming that my box was 456, (276) I am just taking that as an example, 449 to 471 was missing and every other number from 1 to a thousand ran in that bank.

Q. You don't remember claiming that Mr. Miller moved out that entire line in the presence of, I believe, your attorney, the bank examiner and some other people, the man who accompanied you, who had you in custody at the time? A. I was not in custody.

Q. You were not at that time? A. No, sir.

Q. Who came along with you? A. I don't remember.

Q. Someone from the sheriff's office? A. I don't remember who went up there. All I remember is in its place there was some letter file like one—a file cabinet, not a vault one, but one letter sized cabinet in its place.

Q. Do you remember claiming at that time that that box was used for the money that you and Miller jointly owned? A. Yes, I do.

Q. Do you remember saying that? A. I remember partly saying that.

(277) Q. When you say partly, what do you mean by that? A. There was also Gallagher had some money in there.

Q. And Gallagher had some money? A. That is right.

Q. You know he is dead now, don't you? A. That is right.

Q. You say that Gallagher and you and Miller had money in that safe deposit box? A. We were partners.

Q. You were partners? A. They gave me an excuse why I couldn't go in there, that the Erickson investigation was going on and I should stay out of the bank while the investigation was on.

(278) Q. You say you were partners? A. That is right.

Q. Did you know that Erickson had accounts in a large number of banks in the City of New York? A. I know he had one there.

Q. Did you know he also had them in others? A. I don't know about others.

Q. Did anybody tell you to throw in the name Frank Erickson?

Mr. Hallinan: I object to this, your Honor—"did anyone".

The Court: Overruled. I will let him answer.

Q. Did anyone tell you? A. No.

Q. You say there was a safe deposit box which was really—had the resources of a partnership, is that right? A. That is right.

Q. And that partnership was made up of Gallagher and

Miller and you? A. Gallagher and Miller had half and I and some other people had the other half.

Q. Did the other people also have access to that box? (279) A. No. Just me and Mr. Miller had access, or Mr. Gallagher, I am not sure which one, have access.

Q. It was either you—you were one of the two; right? A. Yes.

Q. And it was either Mr. Gallagher or Mr. Miller? A. That is right.

Q. Right? A. Correct.

Q. And at the time when you opened that box was it opened in such a way that the access was available to you and either Mr. Miller or Mr. Gallagher? A. Yes, because nobody had to sign nothing to go in there. They give you a key to go in whenever you want; they never signed to go into the box in that bank.

Q. You don't want to infer that you have to sign in every bank in which you go? A. Any bank that is a legitimate bank you do.

Q. You do? Are you sure of that? A. Any other bank I have ever gone into, want to go into the vault, you sign.

Q. You don't know whether banks have a record (280) that they keep of the person who comes to his box and puts the number down to show on their record when the person came in? A. I know you have to sign to get access to the vault room in other banks.

Q. Do you know that to be a fact in all banks? A. I know where I went any time that is what you have to do.

Q. Would you know, and I give you my own bank, say, eight or ten years ago, Irving Trust Company, whether I had to sign my name if I went in there? A. I wouldn't know; I don't know about your bank.

Q. You couldn't say, could you? A. No.

Q. Now, about when was that box opened? A. When we started having deals together. I don't know exactly.

Maybe; I can't place the date, 47, 1948, maybe end 1946, maybe the beginning of 1949, I don't know. But I know it was opened.

Q. So that it would be anywheres from the years 1946, 1947, 1948, or possibly the beginning of 1949? A. Correct.

Q. Right? A. Right.

(281) Q. Can't you give us a more accurate date? A. I can't, Mr. Rosenblum, because I just don't recall when. I know it was opened, that is all I could tell you. I mean, you are asking things that happened ten years ago.

Q. Haven't you been testifying for the last two days about things that happened ten years ago? A. I have attested, but those things stuck out in my mind. This vault, whether I opened it ten years ago, six years ago or two years ago doesn't matter; the point is I did open it.

Q. In other words, you say that that particular thing was so insignificant that it didn't stand out in your mind like the other things?

Mr. Hallinan: I object.

The Court: I will overrule the objection.

A. I just don't remember.

Q. When for the first time did you go to that box? A. I just don't remember exactly when. When I wanted to go there I just walked in and went and took my key and opened it up.

Q. What did you do? Take money out? A. Take money out, put money in, whatever I had (282) to do.

Q. Did you have any record there, left, so that your partners could see what you took out or put in? A. We had some records. I may take something out or put something in, whatever had to be done. There was trust among us.

Q. Do you know whether Mr. Gallagher had a key? A. I can't say for sure one way or the other.

Q. Do you know whether Mr. Miller had a key? A. I know that either Mr. Miller or Mr. Gallagher had one; which one I can't say.

Q. One or the other had a key, in addition to having the partnership with you, one of the two had the right to go to that box? A. Yes, either one of them. I know that either one of them would go.

Q. Do you recall that a day came when you came down there with a key which was different than the type of key used in the entire vault? A. No. I went down there with a key that was used in that vault.

Q. Do you remember there were people there who pointed out to you that the key you said— (283) A. No, sir.

Q. (Continuing)—would open that vault was a key of a different type? A. No, siree, no, siree.

Q. You say that the key was the same as the other key you had? A. Yes, siree.

Q. But you found an entire line of boxes— A. I don't say an entire line now.

Q. How many boxes had been removed including the one that you say you— A. I can't recall.

Q. (Continuing)—and Mr. Miller or Mr. Gallagher had access to? A. I can't recall exactly, but it was the size of a letter file, about that much by about that wide (indicating), had been removed. Maybe it was six boxes, maybe it was eight, I don't know. But in that number there was one missing which I had claimed was mine. And that is all I can tell you about. It wasn't there. And the numbers ran from 1 to a thousand. Every other number was there.

Q. In other words, on other occasions when you (284) went there you saw that they had boxes and they all—all the numbers were there? A. I didn't say. I presumed

they were there. I couldn't say. I never paid attention to anything else. I know I walked over there, put my key in, took out what I wanted, walked into that small cubby hole there, took it out, took what I want, put it in my pocket, or, vice versa, put it back. Pete Kennedy or anybody else was in the bank at the time would open the thing up. There is two keys involved, a key of their and this key. They have to set the lock or something. And you put your key and it opens it, and only your key alone doesn't open it and the bank key alone doesn't open it.

Q. Isn't it a fact that at that time you claimed that a line of boxes had been taken out? A. No, I didn't claim a line. I only claimed a section, a small section.

Q. Can you give us the approximate date? A. I can't.

Q. Give us some date. A. I can't, Mr. Rosenblum.

Q. Was it after you had been arrested? A. I can't fix the date, I just can't.

Q. Was it after you were arrested or before you (285) were arrested? A. I can't fix the date, I don't recall.

Q. For how many years did you have access to that box? A. A few years before that. I don't recall as to the date. I just know it was, when I walked in there, it was mine. And they had kept me out for quite a few months, telling me that the Frank Erickson investigation is on.

Q. You said that before. A. And Hogan's office is——

Q. Do you want to say it again about Frank Erickson? A. I don't want to say nothing.

Q. I ask you questions and you give me responsive answers. Right? Who did you complain to? Did you speak to Mr. Gallagher about this box disappearing out of a vault in a bank? A. Complain?

Q. Yes. A. I don't recall whether I spoke to Mr. Miller or Mr. Gallagher.

Q. Did you speak to either one of them? A. I spoke to somebody. I was beefing, hollering (286) and screaming about it.

Q. That time when you came in— A. That was after I came in, after it was gone, and they told me not to come in, they were pushing me off, don't come in, don't come in, then we came in.

Q. Now, tell us, you say you are positive there was a vault there and a number that you gave at that time and that you later found that that vault wasn't there, that box in the vault wasn't there? A. Mr. Rosenblum, again I say to you I went to that vault not once, I must have been in that vault room a hundred times, never signed in, never signed out. Many a time I bumped into Leonard Erickson, there.

Q. You want to bring in Leonard Erickson. Tell me what is the significance of your mentioning Leonard Erickson? A. You are asking me about what I did in the vault room.

Q. I asked you whether or not you went to that vault and obtained access to the box that you say later disappeared? A. I went in there many a time. I took stuff out, I put stuff in, and I went back there one day and it wasn't there. That is what I can tell you.

(287) Q. This stuff that you are referring to, what was the stuff that you took out and put in? A. Sometimes there would be head checks, bonds, cash; it would be anything.

Q. And these head checks were checks that belonged either to Mr. Miller and Mr. Gallagher and you? A. No, they belonged to me. I left them there because I didn't want them in my box sometimes. I left them there.

Q. You did not want them in your box which you had with your wife? A. Yes, because next morning I may have to give them to somebody or negotiate them for somebody, so I would leave it there and next day I would take them out.

Q. Can you tell us what was in the box which you say you were unable to obtain because a box was taken out of a safe deposit vault? A. Some money.

Q. How much money? A. I don't remember.

Q. Have you any idea as to whether it was a dollar or $1,000,000?

(288) Was it $50,000? A. I don't remember exactly.

Q. You had a half interest in that, you said? A. That is right.

Q. And you want us to understand that you don't recall even the approximate amount that you said you were beefing about? A. The reason I don't recall it is because later on my partners got it straightened out with Gallagher.

Q. You say the reason that you don't remember is because your partners got it straightened out with Gallagher? A. That is right.

Q. How much was straightened out? A. The money that was in there.

Q. How much? A. I don't remember.

Q. Did you ever check up or do you know whether the authorities ever checked up to find whether there ever was a box in that vault bearing a number of the kind you claimed? A. I don't know.

(289) Q. Did you talk to Miller about this disappearance of the box at all? A. I don't remember talking to him.

Q. Did you talk to Gallagher about the disappearance of this box at all? A. I don't remember talking to him either.

Q. Can you tell us whether the proceeds of the Chernoff bonds were in there? A. No. This box had nothing to do with Chernoff.

Q. Was it the proceeds of the money you obtained in the Roanoke deal? A. No.

Mr. Hallinan: I will object to this.

The Court: Objection overruled.

Q. You mentioned before about your partnership. Was Mr. Miller a partner with you in any of the transactions you had at the Bronx bank?

Mr. Hallinan: I will object to this. I think it is an indirect way of getting at what we have already discussed.

The Court: No, I will let him testify as to the relationship with the defendant. I will caution counsel not to go into deals which he hasn't a reason——

(290) Mr. Rosenblum: All right.

Q. Was Mr. Miller and/or Mr. Gallagher partners of you in connection with the transactions you had in the Bronx Bank? And I mean illegal transactions. A. No, he had nothing to do with that.

Q. How about the Bowery Savings Bank?

The Court: Now——

Mr. Rosenblum: It is the same question.

The Court: Come up to the bench a second.

(The following took place at the bench out of the hearing of the jury.)

The Court: Unless you have some basis for really thinking he was, I don't think you should ask him that.

Mr. Rosenblum: This man speaks of his partner.

The Court: That was not gone into on direct examination. He is your own witness in this regard.

Mr. Rosenblum: He said he has a partner.

The Court: I don't want to go off——

Mr. Rosenblum: He is a hostile witness.

The Court: I don't think you should go into other banks where you think he may have committed improper acts. That is what Mr. Hallinan's objection goes to, and I will sustain it on that basis.

(291) Mr. Rosenblum: Exception.

The Court: You don't think Mr. Miller was a partner in any of those transactions, and, therefore, there is no real basis for it.

Mr. Rosenblum: I don't think Mr. Miller was a partner in any transaction, but I do think that this man by his testimony and the fact that he says there were safety deposit boxes in which there was money is leaving the impression and the jury might infer that Mr. Miller was a partner and Mr. Gallagher, or both were partners, in any of these transactions.

The Court: No. The trouble is you got into this yourself over Mr. Gallagher.

I will sustain the objection.

Mr. Rosenblum: Then I will go into another subject.

May we adjourn now?

The Court: Yes.

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(In open court in the hearing of the jury.)

The Court: We have reached almost a unanimous agreement on one point, that we will adjourn now until Monday morning at 10:30. Don't discuss the case with anyone and don't discuss it among yourselves.

(Adjourned to October 22, 1956, at 10:30 a.m.)

(292)

New York, October 22, 1956;
10.30 o'clock a. m.

Trial resumed.

IRVING MISHEL, resumed.

The Court: All right, Mr. Rosenblum.

Cross examination continued by Mr. Rosenblum:

Q. Mr. Mishel, you undoubtedly recall the testimony you gave with reference to a talk you had after you were arrested on October 6, 1950 by Agent Shershen? Do you recall that? A. Yes, sir.

Q. Now will you please tell us whether you were bailed out that same day on October 6th? I think you gave the answer but I am not sure, so I would rather have you tell. A. I think it was the same day.

Q. Was it that day that you went up and spoke to Miller? A. I don't know when it was, but it was some time thereafter.

Q. Well, when you say "thereafter," it may be a (293) long time. Will you see if you can make it a little closer? A. It was some time thereafter.

Q. You mean to say you have no recollection as to when it might be other than to say it was after the occasion when you were released on bail? A. That is right.

Q. Can you give us the date when you think it was? A. Some time thereafter.

Q. That is the absolute best answer? A. That is the best answer I can give.

Q. Is it that you don't recall the date? A. I just don't

remember how much thereafter, but it was a little while thereafter.

Q. Do you remember where you talked with him? A. I believe it was in the Holland House, across the street from the bank.

Q. Is that just your belief or do you know that it was in the Holland House? A. I am not positive where I talked with him, but I am positive I spoke with him.

Q. You mean that is one of those things again that sticks out, the fact that you had a conversation, (294) but you don't recall the other items, is that it? A. That is right.

Q. Because I notice in your direct examination you said, "I think I met him across the street."

Are you sure of that? A. That's where I think I met him.

Q. And you have a definite recollection of being in that restaurant with him? A. I have a definite recollection of meeting him. I said I am not sure——

Q. I would like to have you give me an answer to the question I asked.

Is it just a belief or you think it was at the Holland House, without having a positive recollection of it? A. I don't remember for sure where I met him, but I remember meeting him.

Q. Do you think it might have been that other restaurant next door to the Holland House? A. I don't know.

Q. It might have been? A. I don't know for sure where it was, but I know I met him.

Q. Would you say, then, that you really don't (295) know where you met him but you know you met him? A. That's right.

Q. And you don't know when you met him but you know you did meet him? A. That's right.

Q. That is the best answer you can give us to both those items? A. That's right, sir.

Q. Were you in the habit of going out with Mr. Miller? A. I seen him occasionally.

Q. Did you go out to some restaurant with him? A. I think I went to dinner with him one evening at a restaurant called Quo-Vadis.

Q. You think so or you know so? A. I am pretty sure.

Q. Do you know where Quo-Vadis is? A. Yes, on Madison or Park. It is between Madison and Park Avenue in the sixties.

Q. Was this after the occasion when you were released on bail? A. I don't know when it was. I should say before, I think.

Q. You think? A. Yes.

(296) Q. You don't know? A. I don't know for sure.

Q. In other words, after you were released on bail you were still friendly with him? A. That's right.

Q. Is that right? A. (Witness nods.)

Q. No doubt about that? A. No, no doubt about that.

Q. Tell us whether you went into the bank after you were released. I am not saying now that it was that day, but I mean after the time when you say you met him did you go to the bank and ask him to come out with you? A. No.

Q. Did you telephone to him? A. Yes, I called him.

Q. Do you remember that? A. Yes.

Q. You do remember—not that you believe or you think, but you remember that you called him? A. At some time after that. I don't say the same day I was released, but some time after that I called him and made a meeting with him and I spoke with (297) him. That I remember.

Q. That you do remember; is that right? A. That's right.

Q. Did you ever go out with him on any other occasion other than the time you say the Quo-Vadis and the restaurant that you believe was the Holland House? A. I

had gone out with him before that, before this incident, occasionally.

Q. For dinner? A. Lunch.

Q. Lunch. Where did you have lunch with him? A. Down the street on the same side of the street as the bank on 48th Street there was a nice little place.

Q. Was that during the time that you were a depositor in the bank? A. Oh, yes, I was a depositor.

Q. Was that during the time that you had seven accounts which were legitimate accounts in the bank? A. How many accounts?

Q. Seven. I will count them up and see if you can remember. A. Maybe you can. I don't remember.

(298) Q. Don't you remember? A. I don't know.

Q. Did you have an account? A. I had accounts, but I don't know how many.

Q. Did your wife have an account? A. Yes.

Q. Mishel Wine & Liquor have an account? A. That's two.

Q. Mishel Wine & Liquor have an account? A. Two.

Q. Two what? A. One account was Helen and Irving Mishel.

Q. Two in one? A. One account. That's one account.

Q. Didn't you have one special account? A. Yes, and I had one Irving Mishel Special.

Q. That was aside from the one you had with your wife; right. A. That's right.

Q. And then you had Berkshire Liquor? A. That was three.

Q. And then one time you had Mishel Wine & Liquor? A. That's four.

(298a) Q. And Admiral? A. That's right.

Q. Regal? A. That's right.

(299) Q. That is six, I think it is. And during the time that you were a depositor in the bank you were getting credit, weren't you? A. Sure.

Q. At one time you had credit, did you not, in the sum of $35,900 on your various accounts that I just referred to, at one time? A. Somewhere around that figure, I don't know exactly. About that amount. Maybe a little less.

Q. Maybe a little more? A. Maybe a little more.

Q. It was in that neighborhood, right? A. Somewheres in there.

Q. You say you started with the bank in about 1946 or 1947? A. Around then; I don't know exactly.

Q. Approximately in that area. Up to, say, the end of 1948, did you owe the bank any money that you hadn't paid? A. Oh, yes, we had unpaid loans.

Q. You had unpaid loans, and as they came due you paid them, but your account was all right, was it not, let us say until the end of 1949? A. I don't know. Sometimes it was good. Sometimes (300) it was bad.

Q. Maybe that is true of all of us. A. I don't know.

Q. But you received credit right along during the time, let us say, from 1946 through 1949? A. I guess I received credit. They discounted notes.

Q. Please don't guess, if you don't mind. Would you please tell us? Will you please just answer? I am not telling you how to answer. Will you tell us, please, whether or not you did obtain loans right through 1949? A. They rediscounted people's notes for me right through 1949.

Q. Didn't you obtain any loans on your own? A. Yes, also on my own signature.

Q. Also on your wife's signature? A. Yes, on my wife's signature.

Q. Was that through 1949, 1946, 1948, 1949? A. I don't know when it was from, but it was sometime.

Q. Wherever you started, I was trying to take the date that you said. A. I don't know. It may be a wrong date.

Q. Will you tell us that it started another date? (301) You tell me. A. I don't know exactly when it started.

Q. Can you give us any idea as to when you started? A. I think to the best of my recollection it was 1946 or 1947 I opened up an account——

Q. Starting with—I am sorry. A. Then I opened the account in the bank in 1946 or 1947.

Q. Starting from the time you began in 1946 or 1947 up to, say, through 1949, were you able to get credit and obtain loans from the Pennsylvania Exchange Bank? A. Sometimes yes, sometimes no.

Q. Sometimes they said you had too much and they wanted you to pay? A. Sometimes the paper that I brought in wasn't good at all; the maker of the paper was very bad.

Q. When the credit department reports showed that the papers weren't accepted by the bank you were so informed? A. Mr. Miller would tell me.

Q. And you were so informed? A. It was no good, by Mr. Miller.

(302) Q. By Mr. Miller. And how about 1950? Did you obtain any loans on any of those accounts which I referred to before? A. I think I did in 1950; I am not sure. I think either five or ten thousand dollar loans, I am not sure. It was sometime in that period when I got some moneys.

Q. Do you recall whether you obtained two loans in 1950 for the Pennsylvania Exchange Bank? A. I don't remember exactly when I obtained loans. I obtained loans, many loans from that bank at different times, and times I didn't get loans.

Q. Do you recall whether you obtained loans from the Pennsylvania Exchange Bank on behalf of Mishel Wine and Liquor Company in 1950? A. Mishel Wine and Liquor Company?

Q. Mishel Wine and Liquor. Give me the name. I don't recall it at the moment. What was the name of the liquor company? A. Mishel Wine and Liquor Corporation.

Q. Corporation. Did you obtain loans in 1950 in the name of Mishel Wine and Liquor Corporation? A. I don't remember if I did or didn't.

Q. Didn't you receive two $5000 loans? A. I did receive some loans, but I don't remember (303) when.

Q. Do you recall whether you received two $5000 loans from Pennsylvania Exchange Bank when neither you nor your wife or the corporation owned the Mishel Wine and Liquor Corporation? A. We owned the corporation.

Q. You owned the corporation but you didn't own the liquor store? A. We had sold the store.

Q. You had sold the store. And when you went down to Miller you obtained a loan, didn't you? A. He knew the store was sold.

Q. In other words, you told him that the store was sold, right, and you wanted to borrow money for a store that was sold? A. I didn't borrow it for the store.

Q. What did you do it for? A. I borrowed it for the corporation.

Q. Is it your testimony, Mr. Mishel, that when you were making that loan it was for the corporation, after having advised Mr. Miller that the corporation didn't own anything? A. He knew it was sold months and months before.

Q. Would you answer the question?

(304) Mr. Rosenblum: May the stenographer read it?

(Question read.)

A. I don't remember when the loan was made, but at the time the store was in the process of being sold or had

Q

been sold and the license was being approved, and I don't recall exactly the circumstances of that loan.

Q. Isn't that the excuse you gave him later when he brought you down and told you that the credit reports show that Mishel Wine and Liquor Corporation didn't own the store anymore? A. No.

Q. It wasn't at that time? A. No, sir.

Q. Isn't that the time when you said to him, "I will give you collateral"? A. No, sir.

Q. Isn't it a fact that the two loans I refer to were made on March 2, 1950, and March 9, 1950? A. I don't know when they were made.

Q. Wasn't it during that period of time? A. I don't remember exactly when they were made.

Q. Isn't it a fact that you did say to Mr. Miller that you were of the opinion that it would take a month until the store passed through the statement of authority and therefore, you thought you did own the store? (305) A. I don't remember.

Q. You won't deny it, will you? A. I can't remember.

Q. You have no recollection? A. That is right.

Q. Isn't that the time when you said, "I will give you collateral"? A. I don't remember telling him I will give him collateral.

Q. Isn't it a fact that you gave him collateral? A. When?

Q. May, 1950. A. May? When this was in March?

Q. Yes. A. What happened to April?

Q. Do you want me to answer it? I don't think I should, but I will. Maybe it will come out in my questions.

Didn't you learn that a man went down to the District Attorney's office, a man went down to the credit department, a man by the name of Paige, Joe Paige, was called down to the 38th Street Branch of the Pennsylvania Exchange Bank in connection with the loan that he had obtained, the funds which went to you, and at that time

didn't you learn that he had told Mr. Brown (306) of that branch that you didn't own the liquor store? A. No.

Q. Do you know whether or not the credit reports as they came through showed that you didn't own the liquor store? A. No, I don't know nothing about that.

Q. Do you know whether or not Mr. Paige suggested that they take a look at the bonds and securities you put up as collateral? A. In March?

Q. May 2, 1950. A. What securities?

Q. Alpren, Sadie and Frank Alpren. A. That wasn't brought out that way.

Q. That wasn't brought— A. No.

Q. Don't you remember you submitted a hypothecation agreement which I think was prepared by Mr. Samuel Bierman, a lawyer? A. As far as Sadie and Frank Alpren stock, that didn't come out that way. And the loans that were past due or due were other people's paper besides my own paper in May were uncollateralized for months and months prior to that, and the stock that was put up (307) was the name Alpren stock, but the bank isn't the one that brought out that the Alpren stock was hot.

Q. That is what you understand? A. Well, I know.

Q. You knew it was hot, didn't you? A. What?

Q. You knew the stock was hot? A. So did a lot of other people know it was hot.

Q. You knew it was? A. So did Mr. Miller know it was hot.

Q. You told him that? A. I certainly did, and he took the cream off the stock and gave me——

Q. Do you know whether or not, then, in May he sent out Mr. Reedy to the District Attorney, Mr. McAvinue and filed the complaint? A. The complaint was filed before that.

Q. That is what you say. A. That is what I know. The complaint was filed by somebody in the name of Pollack, Abe Pollack, a lawyer.

Q. Do you know whether or not the fact is that in May,

1950, Mr. Miller sent Mr. Reedy down to the District Attorney's office to file the complaint? A. I don't know what happened in 1950.

(308) Q. Let me ask you this: In connection with those two $5000 loans which you made, did you plead guilty? A. No.

Q. Did you plead guilty to the 24 counts or did you plead guilty to whatever counts covered the Alpren stock which you uttered? A. I believe that is what I pleaded guilty to.

Q. At that time did that plea cover the indictment in which the two $5000 loans— A. I don't think so.

Q. Are you sure? A. I think that was put aside.

Q. Was it dismissed? A. I don't know. You have to ask my lawyer; he could tell you better than me.

Q. Didn't you know at that time, didn't you hear whether you were entering a plea to the Alpren, to the— I will come back to that in a moment.

Do you recall pleading guilty to the entire 24 counts covering the Alpren stolen or hot securities? A. I recall pleading guilty; I don't know exactly what counts they were.

Q. Do you recall whether you pleaded guilty to all 24 counts? (308a) A. I don't recall exactly.

Q. I will get that information in a few moments. Now, let us go back for a moment. Do you recall your lawyer at that time was Samuel Bierman of 475 Fifth Avenue? A. I believe that was my lawyer.

(309) Q. Do you recall whether the Assistant District Attorney was John McAvinue? A. He was one of the assistants on the case.

Q. You mean he was working for somebody? A. There were other assistants on that case.

Q. What is his name? A. I don't know.

Q. Who was in charge of that case? A. Mr. Hogan, I presume.

Q. He handled it personally? A. No, I don't know who handled it personally. Mr. McAvinue had most to say in that case.

Q. Most to say? A. That's right.

Q. And he had an assistant, another assistant, who worked with him; is that right? A. Two assistants, I think, one a Mr. Newman, and I don't recall the other one.

Q. Newman? A. Yes.

Q. Leonard Newman? A. I don't know his first name.

Q. You say you don't recall and you don't know whether you pleaded guilty to each of the 24 counts? (310) A. I don't know. I know I pleaded guilty. I know I was sentenced, but the exact counts I pleaded to I don't know.

Q. See if this refreshes your recollection. Do you recall whether or not your plea was entered on November 17, 1952? A. It was somewheres around that date.

Q. Do you recall whether John A. Mullen was judge? A. Yes, he was the judge.

Q. Do you recall that the man with Mr. McAvinue was Charles J. McDonough? A. I don't know.

Q. Do you remember whether a Mr. Milton Branch appeared for you? A. Who?

Q. Mr. Milton Branch. A. I don't know anybody by the name Milton Branch.

Q. You say you don't recall whether Mr. Branch— A. I don't know anybody by the name Milton Branch.

Q. Do you know whether he was in court for the purpose I have referred to representing Mr. Bierman, your attorney? (311) A. I don't know anybody by the name of Milton Branch.

Q. Do you recall whether this happened:

"The Court: Yes, gentlemen, come up now."

Then consultations.

"The Court: Arraign the defendant.

"The Clerk: Irving Mishel to the bar."

Do you recall?

A. I don't recall that. That is about four years ago.

Q. The defendant is now duly arraigned at the bar and conferred with counsel.

"Mr. Branch: Ready, your Honor."

A. I don't know any Mr. Branch.

Q. "The Court: Make your application.

"Mr. Branch: The defendant wishes to withdraw his plea of not guilty on Indictment 613/1951 and 295/1951, and he wishes to plead guilty to each of the counts in Indictment 613/1951."

Do you recall that there were two indictments at that time? A. I don't recall the incident at all. I don't even know Mr. Branch. I don't know no Mr. Branch.

Q. Do you recall whether what I said occurred? (312) A. I don't recall ever Mr. Branch, and I don't know nobody by the name Mr. Branch.

Q. Would you say what I just read did not occur? A. I don't know. It must have occurred, but I don't know Mr. Branch.

Q. Do you recall whether or not an indictment bearing No. 295/1951, charging grand larceny in two counts, was returned against you, and the first count charged that on March 2, 1950, Mishel stole $5000 from the Pennsylvania Exchange Bank through false representations, to wit, that the Mishel Wine & Liquor Corporation was the owner of a retail liquor store at 2960 Third Avenue, and so forth, which representations were untrue? A. I believe that indictment you are talking about and this other indictment that I pleaded to was a superseding indictment to that indictment. The first one you are talking about was dismissed or whitewashed or whatever they called it, and a superseding indictment was handed up.

Q. Will you tell us whether or not a second count in the

indictment I just referred to charged that on March 2, 1950, Mishel stole $5000 from the Pennsylvania Exchange Bank through false representations, to wit, (313) that the Mishel Wine & Liquor Corporation was the owner of a retail liquor store at 2960 Third Avenue, which representation was untrue.

Do you recall? A. No, I don't recall that at all.

Q. Do you recall that there was an indictment charging you with those crimes? A. I don't recall. You see, there were so many charges made at the time that I don't recall any of them.

Q. Would you say that this indictment was not returned against you? A. I don't know.

Q. Would you say that you don't remember whether it was returned against you? A. I don't remember a lot of things because those things happened so long ago I just don't remember them.

Q. Mr. Mishel, you have been able to remember a lot of things that you say happened the last six or seven years, isn't that so?

Mr. Hallinan: I am going to object to this.

The Court: Sustained.

Mr. Hallinan: I think that at this point the (314) inquiry has been extended far enough. I think proper proof at this point would take the form of a certified copy of conviction, which is very easily obtainable and would reflect exactly what the man pleaded to.

The Court: Yes. I will let him go on a little bit longer.

By Mr. Rosenblum:

Q. Mr. Mishel, do you recall that the indictment I just referred to, that I questioned you about, with the two

counts, was 295/1951, and now I will read to you from the record and say whether this did or did not occur.

The Court: I don't think it is right for you to say you are reading from a record. There is no proof of the authenticity of that document, whether the stenographer got the name right or did not. I do not know.

Mr. Rosenblum: I will withdraw that.

Q. Tell us whether or not this occurred, after I read:

"The Court: Make your application.

"Mr. Branch: The defendant wishes to withdraw his plea of not guilty"——

A. I don't know Mr. Branch.

(315) Q. Let me finish my question, please.

"Mr. Branch: The defendant wishes to withdraw his plea of not guilty on Indictment 613/1951 and 295/1951 and wishes to plead guilty to each of the counts in Indictment 613/1951."

Would you say whether or not that occurred? A. I don't know Mr. Branch, who you are talking about there. I don't know him.

Q. Would you say that this did not occur? A. I don't know Mr. Branch who you are talking about there.

Q. If I put the same question to you and say to you, was a statement made in your presence on November 17, 1952, as follows——

Mr. Hallinan: No statements. The fact that it is in his presence works no magic formula either. It is hearsay, what somebody else said at the particular time.

The Court: I will tell the jury now that if Mr. Rosenblum incorporates the telephone book or any-

thing else in this question that does not prove that anything happened. The only thing that proves anything happened is what the witness says from the witness stand. He can ask him, was this statement made, (316) were 59 statements made, and all we are going to get out of it is what the witness recalls, and if he does not recall any statement, then Mr. Rosenblum's statement is no proof whatever that any such statement was ever made.

Go ahead.

Mr. Rosenblum: I put the question and I see what my answers are

Q. Will you tell us whether or not on—I think you had told us on November 17, 1953—you entered a plea of guilty in the Court of General Sessions before Judge Mullen? A. I did.

Q. Now, do you recall whether the following was said by anyone in your presence:

"The defendant wishes to withdraw his plea of not guilty on Indictment 613/1951 and 295/1951 and he wishes to plead guilty to each of the counts in Indictment 613/1951."

Do you remember whether that was said? A. I don't recall any of that.

Q. Would you say that it was not said? A. I don't recall any of it.

Q. You cannot say it either way? (317) A. I just don't recall it.

Q. But do you recall whether you pleaded guilty to the indictment 613/1951, which had 24 counts? A. What were the 24 counts? What were they pertaining to?

Q. All 24 counts concerned themselves with the stock. A. The stock I remember pleading guilty. To what I pleaded guilty, I don't recall. I recall pleading guilty to the stock, and that is all I recall pleading guilty to.

Q. Can you tell us whether or not you recall that on that occasion Mr. McAvinue said: "The people recommend the acceptance of a plea of guilty to each count of Indictment 613/1951 to cover as well 295/1951"? A. I don't remember any of that.

Q. See if you can recall this and tell us whether you do or you don't or whether it did or didn't happen.

Do you recall whether the clerk at that time said: "Do you now withdraw your plea of not guilty heretofore interposed and do you now plead guilty to the crime of forgery in the first degree in the first count of the indictment?

(318) "The Defendant: Yes." A. I don't recall that at all.

Q. Do you recall whether or not——

The Court: I think we have gone about far enough.

Mr. Rosenblum: I have a covering question for all the rest of the 23.

Q. Do you recall whether or not the same question was put with regard to the other 23 counts separately, and in each instance you made an answer? A. I don't recall any of it.

Q. Do you recall whether you pleaded guilty to the crime of forgery? A. All I do recall is I pleaded guilty to the Alpren stock, and that's all.

Q. You pleaded guilty also in connection with the Alpren stock to the crime of grand larceny in the first degree, do you recall? A. I don't recall.

Q. Do you recall whether you also pleaded guilty to criminally buying and receiving stolen property as a felony, the 23rd count? A. I just don't recall. All I recall is pleading guilty to the Alpren transaction.

(319) Q. The last one. Do you recall whether you

pleaded guilty to criminally concealing and withholding stolen and wrongfully acquired property as a felony? A. I don't recall.

Q. Would you say you did not plead guilty to all those items? A. I told you I don't recall anything other than the Alpren transaction.

Q. And thereafter did Judge Mullen impose a sentence of 10 to 20 years? A. That I recall very well.

Q. Do you recall whether the Judge at that time made this statement——

Mr. Hallinan: No.

Mr. Rosenblum: I left it out, Judge. It is incomplete.

Mr. Hallinan: I think it is irrelevant.

Mr. Rosenblum: May I show it to your Honor? It deals with something that has been testified to. That is why I want to bring it to his attention.

Mr. Hallinan: He is not going to contradict him with statements made by other people.

(320) The Court: What is it?

Mr. Rosenblum: Just the top (handing document to Court).

The Court: That does not help at all, as I see it. I will come back to the thing that Mr. Hallinan asked for ten minutes ago. If you want to get down to the particularity as to what he pleaded to, you can refresh his recollection with a certificate of conviction, if you want to, but beyond that I am not going to waste any more time on what happened before Judge Mullen.

Mr. Rosenblum: In other words, if I get the certificate I can get the witness back and question him?

The Court: I am not going to bring him back for that. I assumed you had it here. You have

everything else here. No, we won't bring him back for that. It is not that important. I think you have the substance of this thing. He pleaded guilty and got 10 to 20 years for the Alpren transaction. Anything else is cumulative and is not worth bringing the witness back for.

Mr. Rosenblum: That is not what the witness said. It also covered the two $5000 items.

(321) The Witness: I didn't say that.

The Court: What it covers and what it does not you can develop if you have the proper documents while he is still on the stand.

By Mr. Rosenblum:

Q. You say that on the occasion when you met Mr. Miller after you were released you— A. After which release?

Q. Of October 6, 1950. A. Thank you.

Q. That you had a conversation with him; is that right? A. That's right.

Q. That you were then on friendly terms? A. That's right.

Q. For how long a time after that did you continue on friendly terms? A. I don't recall exactly.

Q. Approximately? A. I don't recall exactly.

Q. Can you give us any idea as to whether the time was a short time or a long time? A. I just don't recall.

Q. Did you see him again after that? (322) A. I told you I saw him after that.

Q. And when did you see him after October—after whatever date was—I will withdraw that.

You said there was a time that you cannot fix which was after October 6, 1950, that you saw Mr. Miller and you cannot give us the date— A. I just don't remember. I remember seeing him, but when, I don't remember.

Q. Can you tell us whether at this time, when you saw him, and you say it was after October 6, 1950, whether you had the safe deposit box that you said was owned by you and your two partners, Gallagher and Miller? A. I just don't remember, as I told you on Friday, whether it was before or whether it was after. I just don't recall.

(323) Q. Whether what was before? A. The safe deposit box, when this incident happened. You asked me that seventeen times the other day.

Q. Go ahead. A. I just don't recall.

Q. You don't recall when you had the safe deposit box? A. When we went in there. You asked me just then when we went in there.

Q. I am asking whether or not at the time, whatever that time was when you say you spoke with Miller, did you at that time still have the safe deposit box in the name of Robert Benson?

Mr. Hallinan: I will object, your Honor. May we approach the bench just briefly.

The Court: Sure.

(The following occurred at the bench out of the hearing of the jury:)

Mr. Hallinan: I will object to any further inquiry about the safe deposit box on two grounds: First, the matter was very thoroughly explored on Friday over my objection, first my objection which I said I did not press, and second, the other objection which I said I was going to press vigorously.

(324) The Court: Which was that?

Mr. Hallinan: When the matter had gone on for sometime, I got up again and objected. The second ground is that I have examined the record very carefully over the week end and I did not explore this particular territory with this witness.

I think that when Mr. Rosenblum got in this

area that he had adopted the witness as his own and what is taking place now is that he is setting up a witness who is his own for the purpose of setting up his own straw man for the purpose of knocking him down, I anticipate, through the witness himself and through other witnesses.

I think, in my view of the law, that Mr. Rosenblum is stuck with this particular testimony at this particular time, and I renew my objection as to any further inquiry on these two points.

Mr. Rosenblum: I think it is proper cross-examination. He said he had dealings with this man, and I was exploring the dealings and I brought things to his attention. Let us assume if he had remembered he had committed another crime, that makes him my witness. I don't think I am limited solely and only to those (325) particular items which occur. In particular, if the questions I ask come out as a result of my cross-examination on those items, I don't think he becomes my witness. If he is, he would be a hostile witness anyway. I think that is obvious.

The Court: Aren't we getting into two different things: Your right to cross-examine and your right to produce independent proof? Just because I have let Mr. Rosenblum cross-examine on this subject is no suggestion I am going to let him put in independent proof that there was no safe deposit box. That is what Hallinan is in a sense giving you notice of now. When that proof is tendered, he is going to object and I think with some basis. In other words, you cannot develop an unrelated transaction with the defendant and then produce proof that his testimony on that was false.

Mr. Rosenblum: I don't think it is unrelated, Judge. My thinking is this: Here a man is telling

about his association and relations with Gallagher and with Miller. He comes up to a certain point. I cross-examine him. It develops there are other relations that he said existed.

The Court: Can you produce independent proof (326) on that $5000 bond that Mr. Halinan never went into at all? I don't think so.

Mr. Rosenblum: $5000 bond?

The Court: It seems to me you have gone off into those transactions which at the moment seem unrelated to the one we are trying here, whether Mr. Miller made a false statement to the Treasury Department. I do not see what the bond has to do with it and I do not think I will take any proof on it except what you have developed, and the same thing about the safe deposit box. I do not see how it ties in. In other words, I am not cutting you off at the moment as far as cross is concerned, but I am telling you that I do not think I am going to take any independent proof on it.

Mr. Rosenblum: I think it is admissible, Judge. Independent proof will be admissible. Just because a witness brings something out on cross-examination, since it is related to the matter we are discussing and examining him about, I think that if anything which he says is untrue and I can prove it, it is admissible.

The Court: I have let you go on. I think it is proper for you to develop this man's background of relations with the defendant as far as you want to, but I do not think we are going to try out the truth of all of the (327) statements he makes as to that background. We haven't got time. I want to try the question whether Mr. Miller made a false statement and I don't want to get off on those issues. So I think you ought to keep it in mind. I am not

stopping you now as far as cross is concerned. If Mr. Hallinan is objecting, I will overrule the objection and I will let you go into almost any question of the relationship with the defendant on cross, but I won't take independent proof except on matters material to the issue on trial here.

Mr. Rosenblum: That is right, if it is material. That is what I say.

The Court: I do not think it is. I do not think that the safe deposit box or those other bonds are.

Mr. Rosenblum: I think, as Mr. Hallinan has stated—it is in the record—that the dealings, as he claims, between Mr. Miller and Mr. Mishel are the basis for the falsity of the statements which he claims were in those letters which are the subject matter of the indictment. I think if that is so, that it then follows that anything which is relevant to that should be——

The Court: In other words, if Mr. Hallinan had proved these incidents as part of his chain of proof that Miller knew the kind of man Mishel was and the kind (328) of business he brought to the bank, I am not sure he could have gotten it in, but assuming he could have, then I would say you could both cross-examine and produce independent proof on it, but he has not tried to prove his case that way.

Mr. Rosenblum: He showed that Mr. Mishel had a conversation with Mr. Gallagher and Mr. Miller right at the very beginning in which he claimed that at that time he said, "Do anything you want, legal or illegal."

So that was open and completely on direct examination and not on cross. I did not bring that out. He says that is what was said on direct examination. Then he goes in to show a course of conduct in support of that. I think it all becomes relevant since he opened that.

The Court: I do not think he showed any general course of conduct. He stuck right to this transaction.

Mr. Rosenblum: Once the man says they had this relationship, I don't think that you say it is just to be limited to the one thing they want to bring out and nothing else.

The Court: I do not think the defendant said he had this relationship. He told us that a conversation took place, in other words—I do not know whether this was his introduction to Miller or not.

(329) Mr. Rosenblum: Yes, that is what he said. He said at the time he was in with Gallagher and Miller walked in and at the time Gallagher said, "You can do anything with him that you want. He comes from good people."

The Court: I think there is a limit to how many bridges we can cross before we get to them, but I did not want you to get into an impartial position.

Mr. Rosenblum: Around the Pennsylvania Exchange Bank, in light of the setting they set, it shows the relationship.

The Court: You can cross-examine on it, but I do not think we have a basis for independent proof of these other transactions.

(Proceedings were resumed within the hearing of the jury as follows:)

Mr. Rosenblum: Will you read that last question, please?

(Last question read.)

A. I don't remember.

Q. Do you recall when you opened the box in the name of Robert Benson? A. Shortly after—maybe three or six months after I became a depositor in there.

(330) Q. That would make it, then, three or six months after— A. A year; I don't know.

Q. Three months, six months, or maybe a year after '47; is that right? A. Three months, six months, maybe a year.

Q. Did you retain that box until the day that you told us about when you went down and you said you found the box had been removed and something else had been put in its place? A. The box was there until that time.

Q. Do you recall whether a detective from the District Attorney's office was up with you at the time you went up and say you found that the safe deposit box had been removed?

Mr. Hallinan: Your Honor, I am aware of your recent ruling, but this was covered exhaustively yesterday.

Mr. Rosenblum: I did not go into this.

Mr. Hallinan: Yes, you did. We are going to make no progress at all if these matters are going to be covered three or four times.

The Court: I think I will sustain the objection. I do not think you asked him specifically about the (331) District Attorney's office, but you asked him who was with him, and you asked him about the Sheriff's office and I think we have gone over it enough.

Mr. Rosenblum: There were two incidents he talked about—on one occasion when the Sheriff was there for his own box.

The Court: Read this question and let him answer it, if he can do it.

(Question read.)

A. I don't remember who was with us.

Q. At the time that you went up to the bank, were you

still on friendly relations with Mr. Miller? A. I don't remember.

Q. You have no recollection at all? A. (Witness shakes head.) Because I don't know when it was.

(332) Q. You testified with reference to a time when you say you turned over the Chernoff bonds to Mr. Miller and he put it in his desk. Do you recall that? A. Yes, I recall that.

Q. At that time did you have the safe deposit box? A. I don't recall whether I did or I didn't.

Q. You don't recall that? A. When was this? In what year?

Q. Well, you tell us when you gave the bonds to Mr. Miller when you say he put them in his desk. A. Oh, in 1949. I don't recall whether that incident was before or after, as far as the safe deposit box.

Q. You don't recall whether the incident when you found the box was gone was before or after? A. I don't remember, that is why.

Q. Wasn't it after you had already made some statements to Mr. McAvinue? A. When was that It must have been after then.

Q. Didn't you talk to McAvinue after the Chernoff incident? (333) A. Yes, then it was after.

Q. So it was after? A. Yes.

Q. So the box was there at the time you claim? A. In 1949 it was there.

Q. At the time when you brought the bonds, as you say, to Mr. Miller, you had the box? A. That is right.

Q. Is that right? A. That is right.

Q. You say he had access to it? A. That is right.

Q. Can you tell us one single thing that you saw Miller put into that box? A. Money.

Q. Did you see him put it in? A. Yes.

Q. You were there with him? A. Yes.

Q. Did he have access to the box or Gallagher? A. Either one of them.

Q. Which was it? A. Either, either.

Q. Tell us when that occurred. Give us a single (334) occasion when you say that occurred. A. When we had the box.

Q. Tell us the time, please, and the circumstances, anything that brings it to your mind. A. Cashing of some money, burnt money.

Q. Burnt money? A. That is right.

Q. What is burnt money? A. Burnt money that came out of the safe that was burned, the edges.

Q. You say the money that came out was regular legal tender? A. Tender that was stolen out of a safe that was burned, scored, and they cashed it.

Q. When was that? A. About the same time.

Q. When? Give me a single date. A. The same time as these Chernoff bonds, in that area of time.

Q. Can you give me the name of a single person who was present, outside of yourself, who might remember some of these things that you say occurred? A. I could tell you whose bonds that came out——

(335) Q. Answer the question. A. No, I will tell you what came out of there besides money.

Q. Let me ask the question. You will have every opportunity. I ask you if you can give me, give the Court and the jury the name of a single person who was there outside of yourself and Miller or Gallagher when you say some money was put in or taken out of that box. A. I don't know of anybody I could say offhand, but I could tell you the incidents what went into that box.

Mr. Rosenblum: May that be stricken out as not responsive, your Honor?

The Court: No. I will let it stand.

Q. Now you tell us the date when you say these incidents occurred. A. Let me know when certain bonds were stolen and I will tell the exact date.

Q. Can you say when the bonds were solen? Don't you know when the bonds were stolen? A. These were negotiable bonds.

Q. Can you tell me whether or not during the entire time that you had the box with Miller and/or (336) Gallagher, which one had the other key, whether you were friends with them until you found that the box was gone? A. I believe we were friendly all that time.

Q. Can you give us the date at all? A. I just can't give you the date, Mr. Rosenblum.

Q. You said on your direct examination that there were some stiff accounts that you referred to; right? A. Yes, sir.

Q. And you said that you paid $150 a month. For what?

Mr. Hallinan: I object to this unless Mr. Rosenblum can state to the Court that he has something new. I think we have been over this exhaustively.

Mr. Rosenblum: No; I haven't.

The Court: I will allow the question.

Mr. Rosenblum: I didn't touch on this fact at all. I just went into some names of accounts. I never went into anything with reference to paymenfs.

Mr. Hallinan: I will show you about the 25 references in the record that reflect this.

The Court: We are going to take our mid- (337) morning recess anyhow, and I will excuse the jury and you can show me anything you want.

Don't discuss the case.

(Jury retired.)

Mr. Hallinan: Stiff accounts was covered: Pages 215 to 216, 239 to 241, 241 to 244, 245 to 251.

The Court: 215 and 216. And what is the other?

Mr. Hallinan: 239 to 241. 241 to 244.

The Court: Just a minute now.

Mr. Hallinan: Oh, I am sorry.

The Court: What is the next one after 241?

Mr. Hallinan: 245 to 251.

The Court: Yes.

Mr. Hallinan: That is all.

The Court: I will let you go ahead for a while anyhow. Get back here by five minutes to twelve.

(Short recess.)

Mr. Rosenblum: What was the last question?

(Question read.)

Q. Now, can you tell us when the first $150 was paid and for what account? A. I don't remember the name of which account (338) came first, but I remember that $150 was paid, and many times thereafter it was paid by me or by some employee of mine who would bring it up.

Q. Will you answer the question, please, if you can. When did you make the first payment? A. When the first account was opened.

Q. When was that? A. I don't recall the exact time.

Q. Give us the approximate date. A. Sometime '47, maybe 1948, or maybe the beginning of 1949, somewheres in there.

Q. That is three years you have referred to. Do you say that you don't know whether it was 1947, 1948 or 1949? A. That is right.

Q. You remember all the other details that you testified about but you don't remember when you made the first payment?

Mr. Hallinan: I object to this.

The Court: Sustained.

Mr. Hallinan: It has happened so much I would ask the Court to ask Mr. Rosenblum please not to

do it any more. I hate to stand up each time it happens, but it has happened sufficiently so far that I anticipate (339) it will happen in the future. There is no necessity to rephrase in this manner what the witness has said.

The Court: No. Go ahead. I sustain the objection to this question.

Mr. Rosenblum: Exception.

Q. Tell me, when was any other occasion that you paid or anyone in your behalf paid Miller $150 for operating one of the accounts you referred to as the stiff accounts? Can you give any date at any time? A. I sent Sam Siegel up with money, I don't know exactly the date; I sent Norton Schnabel up with money; I sent Mickey Rosenberg with money. I don't know dates. They weren't important to me.

Q. What did you tell them to say to Mr. Miller, Schnabel, Rosenberg, Siegel, at the time they delivered that money for you? A. Give this money to Miller and take these deposits and make them at the window.

Mr. Rosenblum: Give me that answer again.
(Answer read.)

Q. You just told them to give money to Miller? A. That is right.

Q. Open money? (340) A. I took it, put it in an envelope, sealed it, sometimes opened, and I said, "Give it to him."

Q. Which was it? Sealed—— A. Both ways. Sometimes sealed, sometimes open. Any way it happened to come out.

Q. You say that you gave Schnabel money to deliver to Miller? A. That is right, and Siegel.

Q. Either sealed and sometimes unsealed? A. I gave

it to Schnabel, I gave it to Siegel, I gave it to Mickey Rosenberg.

Q. Did you tell them to say anything at the time? A. No, just give it to Miller, and if he isn't there bring it back, or sometimes I would say to leave it for him, leave the sealed envelope for him.

Q. Can you give us any date or any time when Siegel made such deliveries? A. Yes, when he was in my employ.

Q. Can you give us anything better than— A. I don't know——

Q. —that answer, when he was in your employ? A. I just don't know the exact years that he was in my employ, but in that time in my employ he did (341) it.

Q. Can you tell us what particular accounts and how much you paid for a particular account? A. I think the name of the account was Sam Marco.

Q. Was there any other account for which you paid? A. John Case.

Q. How much did you pay for John Case? A. $150 a month.

Q. For how many months? A. A couple of months. It didn't run——

Q. How many? A. It didn't run long. A couple of months, a couple of months, maybe two, maybe three, maybe one month.

Q. How much in all do you say you paid Miller for the particular purpose your have just testified about? A. How much in dollars and cents?

Q. Yes. A. I don't know. Hard to say.

Q. Did you pay it each month? A. Yes, the first of the month, third of the (342) month; sometimes before the month went out we straightened out.

Q. Can you tell us, if you can, any recollection when you yourself paid Miller, money to Miller? A. On many occasions.

Q. Can you give us any occasions? A. I just don't remember the time. I remember paying him, I remember sending Sam Siegel on many occasions. Sam was my man Friday, and he would go up there whenever I told him. He would deposit checks, make withdrawals, leave money, pick up bad checks, do everything for me.

Q. Can you give us any other information with reference to these payments that will help us fix the time and amounts you paid? A. Yes, when they were in my employ I used to send them up there.

Q. Would that be 1947, 1948, 1949? A. In those years. Maybe 1949, maybe 1948; I don't know what years it happened. I know it happened.

Q. All these things that you have testified about, do you say that this pursuant to the talk that was had with Gallagher when you say Miller walked in (343) there and Gallagher is supposed to have said to Miller, "Do anything you want," or "Do anything this man wants you to do, whether it is legal or illegal"? A. About that time. It happened after, it may have happened two years after.

Q. It was all pursuant to that talk? A. I don't know what you mean by that.

Q. You testified— A. I don't know what "pursuant" means.

Q. You testified that on an occasion came into the room? A. That is right.

Q. When you were with Gallagher, and when you say Gallagher said to Miller, "Do anything you want, anything this man wants you to do, whether it is legal or illegal"? Do you recall that? A. I recall that conversation.

Q. Do you say that those things which you have testified about that occurred, which you say, were illegal, were done pursuant to that talk? A. They were done before that, too.

Q. It was done before that? In other words, you say

that you didn't start doing anything which (344) was improper or illegal with Miller until—I withdraw that.

You say now that before the talk that you had with Gallagher you were doing things with Miller which were illegal? A. Before this talk with Gallagher?

Q. Yes. A. Yes, because this talk may have been six or eight months after I was a depositor in the bank.

Q. Tell us what you did before that talk with Miller. A. I had some burnt money that was taken out of the safe that was cashed there and I paid for the cashing of it.

Q. You mean you brought some burnt money in to Miller and you had it cashed; right? A. It was brought in, it was cashed. It was burnt money that came out of a safe that was in tiny pieces and they put the pieces together and they cashed the money for me and I paid for the cashing of it.

Q. Now, Mr. Mishel, you say before this talk with Gallagher on an occasion you brought— A. It was around the same time.

Q. —in burnt money, do you mean hot money? (345) A. The money came out of a safe. When it came out of the safe it was singed or scored——

Q. Seared? A. Seared.

Q. Or singed? A. Pieces, half-pieces, part of it you could just make out the two numbers; the ends were all burned to pieces.

Q. At that time you hadn't had the talk with Gallagher? A. I may have talked with Gallagher——

Q. At that time you hadn't had the talk with Gallagher and Miller? You know the conversation I am referring to. A. I don't recall whether it was before or whether it was after.

Q. You said a moment ago you knew it was before. A. The conversation with Miller and Gallagher I had—from the day I went into that bank I had an okay there to do

what I wanted. The fellow that took me in got me an okay.

Q. Please answer my question.

Mr. Rosenblum: May that be stricken out as not responsive?

(345a) The Witness: He asked me a question and I answered it.

Mr. Rosenblum: Let me ask the question, if I may respectfully say to your Honor.

The Court: What is the question?

(Question read.)

(346) The Court: Well, it was an argumentative question. I think I will let the answer stand.

Mr. Rosenblum: All right.

Q. When you say you talked about warm money and hot money, is that right? Do you recall you referred to it in your testimony? A. Yes, sir.

Q. By that you mean it is crooked money, stolen money, stolen bonds? A. Not bonds. I am not talking about bonds. I am talking about stolen cash that was taken out of a safe from a chemical company on the west side of Manhattan.

Q. What are you are saying to us is, and see if I am correct in stating it, that you are talking about the money, half of which had been seared from fire, burned, or pieces had been chopped into pieces as a result of something that occurred, is that right? A. That is right.

Q. You tell us now, take a dollar bill that has been burned around the edges or was chopped into four pieces, could you tell from looking at that that there was something wrong about that money? A. When you pay 10 per cent for it you know there (347) is something wrong for cashing it.

Mr. Rosenblum: May that be stricken out, your Honor.

The Court: No. I will let it stand.

Mr. Rosenblum: Exception.

May the question be read again? It was not responsive, your Honor.

(Question read.)

A. I don't know what to say on that.

Q. You mean to say if you went in to Mr. Miller or Mr. Littlefield or anybody or in any bank and you brought money which was in such condition— A. I brought $16,000——

Q. $16,000,000 dollars worth. A. —in that condition.

Q. Whatever the amount may be. Is there anything that you can see from looking at those bills which would show they came from an illegal source?

Mr. Hallinan: I object. He has answered the question. I object on the ground that it is repetitious.

The Court: I will overrule the objection.

Read the question.

(Question read.)

A. If he took it from me that way, burned all over, (348) he knows they didn't come out of a fire.

Q. You are telling us now what you believe he knew? A. I told him where it came from. In fact, I put the bonds in the bank, too, from the same place, the bonds were deposited in the bank.

Q. This was all before the talk that you and Gallagher and Miller had? A. Around the same time. It could be—

Q. You said before it was before. Do you want to change that?

Mr. Hallinan: No, I don't think he said it was before, your Honor.

The Court: I will sustain the objection as to form.

Q. Tell us of any transaction you had with Miller before the talk that you recited that you say took place at the time you walked into Gallagher's office, the details of which you gave us. Any transaction you had with Miller which was illegal. A. This money.

Q. This money, you are sure it was before that occasion? A. They cashed money sixteen times in there for (349) me. They used to cash thousand dollar bills.

Q. Are you sure this occasion was before? A. Remember when the thousand dollar bills were bad?

Q. Answer the question if you can. A. You are jumping on me.

Q. I am not jumping on you. A. Well, sit back there.

Q. I would like to stand wherever his Honor will permit me to stand. A. I can hear you good.

Mr. Rosenblum: I don't think, if your Honor please, that I have to take instructions from this witness.

The Court: I think you are quite right.

The Witness: I am sorry, sir.

The Court: I would like to know what question we have before us.

Q. Tell us of any illegal transaction you had with Miller. A. I told you three times already.

Q. Let me finish my question, please. (Continuing) Which occurred before the talk that you described on your direct examination and the one which took place at the time you walked into the office when you were with Gallagher? A. He used to cash thousand dollar bills for

me (350) at the time they were picking them up, the Treasury Department.

Q. Anything else? A. Offhand, I just don't recall. Maybe this bank money, it was around that sometime; it could have been before, it could have been after. But they used to cash thousand dollar bills like they were three dollar bills or five dollar bills.

Q. Is that the only thing that you say occurred? A. I just don't recall.

Q. The cashing of thousand dollar bills? A. I just don't recall. I recall this burned money, too.

Q. Do you say that occurred before? A. Some occurred before, some occurred after.

Q. Some occurred before and some occurred after. A. That is right.

Q. Anything else that occurred before? A. I just don't remember.

Q. And this you say was before Gallagher gave you an O. K. to Miller? A. That is right. I got the O. K. through Irving M. Luria, and the same day I went into the bank he gave me five thousand or four thousand dollars.

(351) Q. You mean he said your credit was good? Did he say to them you were a crook? A. I don't know what he said to them.

Q. You know Luria? A. You know him, too.

Q. Of course, I do. You know he is a lawyer, don't you? You say now, when you say you got an O. K., you are implying that Mr. Luria, in substance, said to Miller, "You can go ahead and do something which was crooked with this man"?

Mr. Hallinan: I object to the form of the question. The witness has just said that he did not know what Mr. Luria said to him.

Mr. Rosenblum: He said he got an O. K. from him.

Mr. Hallinan: The implications in this case are for the jury, and I am going to object time and time again, if I have to stand up, to Mr. Rosenblum incorporating in a question, the implication he wishes to get before the jury, which he can argue during his summation.

The Court: Well, with your general proposition I do not have any disagreement. But I think if you read that question back I will let it be answered.

Would you read the question?

(352) (Question read.)

The Court: I think you had better rephrase it as to form. There are several questions in there.

Q. At the same time you say Mr. Luria introduced you to Mr. Miller, tell us what he said. A. I don't know what he said.

Q. You weren't there when he introduced you? A. Yes, he said, "Hello, this is Irving Mishel. This is Jim Miller." "Hello." That is about the conversation.

Q. Did he say something about your becoming a depositor in the bank? A. Well, he said, "This is the fellow I was speaking to you about." But Irving Luria and me had been doing something at the time that was illegal.

Mr. Rosenblum: May that be stricken out?

The Court: Yes.

Mr. Rosenblum: I think I am entitled to a responsive answer. I don't think that we should be bound by any statement he wishes to make if it is not responsive to the question.

The Court: Well, I won't generalize, but I will strike that statement and tell the jury to disregard it.

(353) Q. Now, you tell us what else was said outside of what you say Mr. Luria said, "This is Mr. Mishel," and, "This is Mr. Miller." Tell us anything else that was said at that time. A. I don't remember exactly what was said.

Q. Now, you remember, Mr. Mishel, I started on the line of questioning with reference to different persons to whom you previously made statements. Do you remember on last Friday or on Thursday I touched on it? A. I remember.

Q. You remember I asked you if you made a statement to Mr. McAvinue? A. Yes.

Q. You said you made a confession to him? A. Yes.

Q. Then I got as far as you said you made a statement to Mr. Milenky? A. That is right.

Q. Did you say to Mr. McAvinue that you brought burnt money into the bank? A. I did.

Q. In that statement? You are sure of that? A. Positive.

(354) Q. You are positive? Was that on the first occasion you talked to Mr. McAvinue? A. I don't know what occasion. I spoke to him, to McAvinue, many times.

Q. Is it a fact that on some occasions you made statements which were different than the statement you made on other occasions?

Mr. Hallinan: I object to that, your Honor.

The Court: Yes. I sustain the objection as to form.

Mr. Rosenblum: Exception. Oh, as to form. I will change it.

The Court: You suggest that they were inconsistent.

Mr. Rosenblum: No.

Q. Was the first statement that you made to Mr. McAvinue one in which you put all of those details you have testified about, about these items that you have given the jury with reference to what you call were illegal transactions? A. The first statement I made to anybody was no statement. I refused in this instance with Mr. Sershan to give him a statement.

Q. You talked to Mr. Sershan? A. I refused to give him a statement.

(355) Q. Who was the first person to whom you did make a statement with reference to those things that you have testified about in this case? A. I don't remember who it was. I think it was Mr. McAvinue, maybe Mr. Milenky; I am not sure. I think it was Mr. McAvinue, though.

Q. How many statements did you make to Mr. McAvinue? A. Oh, quite a few.

Q. How many? A. I can't count. A few statements.

Q. Would you ten, seven? A. I don't know. A few.

Q. How many would you say? A. I don't know what you consider statements.

Q. Who made a record of what you said? Any time that Mr. McAvinue made notes of or any record of what you said, will you tell us on how many occasions that occurred? A. Quite a few.

Q. How many? A. I don't know. Quite a few.

Q. Would you say by that you mean twenty? A. I don't know. Quite a few. That is all I know.

Q. Would they be as many as ten? A. Quite a few, Mr. Rosenblum.

(356) Q. Would they be as many as thirty? A. Quite a few. I don't know how many.

Q. Over how long a period did you make statements to Mr. McAvinue? A. Over a period of about a year, maybe.

Q. During that period of a year you say you made quite a few statements, is that right? A. A few. I don't know whether quite a few. A few.

Q. Were they all exactly the same? A. Well, some of them were phrased differently. But the statement in substance was the same.

Q. The statement you say in substance was the same— A. Facts.

Q. (Continuing)—from the very first time to the very last time that you made a statement to McAvinue, is that right? Is that right? A. I may have added things to it.

Q. What is that? A. I may have added things to it.

Q. In other words, there were times when you didn't in the first instance make a complete statement, did you? (357) A. I made statements; I don't know how complete they were.

Q. How many times did you change statements?

Mr. Hallinan: Oh, no.

Mr. Rosenblum: All right. I will change the form.

Q. Did you ever change the statement? A. Not to fact. To place, maybe, but not to fact.

Q. Wasn't it your first contention that you had been in Florida at the time this Chernoff took place? A. What?

Q. Wasn't it your first statement—A. Chernoff?

Q. Yes. A. I don't remember any statement about Chernoff.

Q. Would you say that you didn't say at the time of the Chernoff transaction you were down in Florida? A. I don't remember anything about the Chernoff transaction.

Q. Would you say that you didn't make a statement about the Chernoff statement? A. I don't remember whether I did or I didn't.

Q. How many statements did you make to Mr. Milenky? A. Ask him. He is standing over there.

The Court: No.

(358) Mr. Rosenblum: I will be happy to, if he produces them; we will see how many there are by number.

A. I don't know. Many.

Q. How many? A. Many.

Mr. Hailinan: Oh, I am sorry. In response to Mr. Rosenblum I would be delighted to make available Mr. Mishel's statement, if he is serious. If that was a serious request I would be delighted to make it available.

Mr. Rosenblum: One statement or every statement?

Mr. Hallinan: Mr. Rosenblum, you directed a request to me to make available the statement made to Mr. Milenky and I——

Mr. Rosenblum: I talked about a whole series of statements.

The Court: If you are through with your conversation we will go on.

Mr. Hallinan: I am sorry, your Honor.

Q. When for the first time did you make a statement to Mr. Milenky? A. Now, let me think. About three years ago.

Q. Where was that? A. I believe it was in the Bronx County Jail, or in this building, I am not sure which. But it was (359) either here or there.

Q. Did you make a statement to Mr. Milenky in any other place other than the Bronx County Jail or here in this building? A. Yes, I may have made a statement to him in Westchester County Jail.

Q. Westchester County Jail. Now, where else? A. Federal House of Detention.

Q. How about the Tombs? A. Maybe in the Tombs; I am not sure.

Q. That is five places you mentioned. A. That is right.

Q. Where else? A. I don't remember.

Q. How about up at Sing Sing? Do you know whether he visited you there? A. No, never visited me there. The records of Sing Sing are available, so you can check.

Q. I am asking you a question. A. I answered it.

Q. How long were you in Sing Sing after the sentence was imposed?

Mr. Hallinan: I don't know what relevancy this has, your Honor.

Mr. Rosenblum: I want to fix places.

(359a) The Court: I will let him answer.

A. A couple of months.

(360) Q. Since then have you been in other jails? A. Yes.

Q. Like the Tombs or Westchester; is that right? A. That is right.

Q. Were there any other places than the five you mentioned where you made statements to Mr. Malinky? A. Not that I can remember. I don't know of any others.

Q. Were those statements recorded? A. Some of them were, some of them weren't. Some he took down by himself and some with other agents present; usually with other agents present.

Q. Any of them recorded by any stenographic device? A. I think a stenographer recorded about a 50-page statement I made to him at one time.

Q. When did you make that 50-page statement? A. About three years ago.

Q. Was that the first statement you made? A. That is about the first time I ever made a statement to him.

Q. Was that after the statement you made to Mr. McAvinue? (361) A. Oh yes.

Irving Mishel—for Government—Cross

Q. Do you recall about when you made the statement to Mr. McAvinue? A. No, I just can't remember when I made the statement to Mr. McAvinue.

Q. Do you recall whether or not you changed the statement, the first statement, you made to Mr. McAvinue in any way? A. I don't recall at all.

Q. You would have to see them to see whether you did or not? A. If I saw them maybe I could refresh my memory.

Q. Have you been shown any of those statements? A. Which statement are you talking about?

Q. Any statement you made, say, to Mr. McAvinue. A. Mr. McAvinue?

Q. Yes. A. I don't remember ever seeing any of them.

Q. How about Mr. Malinky? A. I have seen them from time to time.

Q. Have you seen them before you testified? A. I have.

Q. Can you tell us whether or not it is your (362) position, whether you will say to us now whether it is the fact—I will change the form.

Tell us, were the statements all the same? A. To fact, yes; to places, no. I was mistaken in one instance about one restaurant; it was another restaurant. I was mistaken about one day and it was another date. But fact, pretty accurate.

Q. Do you recall whether or not at any time in any statement you advised either Mr. McAvinue as to—did you ever tell Mr. McAvinue about the safe deposit box incident? A. I believe I did.

Q. Did you ever tell Mr. Malinky? A. I believe I did.

Q. And do you say now that the statement that you made in court here is the same as you made to McAvinue and Malinky? A. I don't remember what I made to McAvinue. I remember what I said to this man right here.

Q. When was it that you talked about the safe deposit box incident to Mr. Malinky? A. Oh, a couple of years ago.

Q. Was that after the statement three years ago or about the same time? (363) A. It was around the time of the first statement, maybe a couple of months later. I don't recall exactly when, but I did tell him about it.

Q. Now who else outside of Mr. McAvinue and Mr. Malinky did you make statements to? A. Assistant U. S. Attorney Hallinan, Costiglio, Brown, and Silverman, and Stratton.

Q. Who was that? A. A Mr. Stratton, Assistant U. S. Attorney Stratton.

Q. Stratton? A. Right.

Q. Who did you make a statement to first of the five people you have mentioned? A. There was another one, another U. S. Attorney. Mr. Klein.

Q. Klein? A. Klein.

Q. Which one did you talk to first? A. Mr. Klein.

Q. Is that Martin Klein? A. I think that is his first name.

Q. Short fellow with rather dark hair? A. I think that is his first name.

Q. About when did you make the statement to (364) Martin Klein? A. About the same time I made the statement to Mr. Malinky.

Q. That would be about what date? A. About three years ago, maybe two and a half years ago, about three years ago I would say. Then Mr. Klein I believe left the U. S. Attorney's office and Mr. Costiglio——

Q. He took over? A. Yes.

Q. He took the case, that is, Lawrence Costiglio? A. Yes, Lawrence Costiglio.

Q. And he took the case over after Martin Klein left the office? A. That is right.

Q. In connection with Martin Klein, how many state-

ments did you make to Mr. Martin Klein? A. I don't remember exactly.

Q. How many statements were recorded by a stenographer in Mr. Martin Klein's office? A. I don't remember that. You see, Mr. Martin Klein was—I remember him just vaguely; it was a short time that he spoke to me, maybe only once or twice, that is all.

(365) Q. Do you recall whether on each of those occasions you made a statement on the first one or two times? A. There was agents there, I recall that, agents of the FBI. I think there was a Mr. Robert Ives of the FBI, and Mr. Thomas Dugan of the FBI, besides Mr. Malinky.

Q. At that time when you say three agents were there— A. Well, Mr. Malinky I know, with these other agents, sometimes all three of them, but in most instances Mr. Malinky was there.

Q. When you talk about most instances, are you talking about making a statement on these various instances? A. They were speaking to me and questioning me about facts of things that happened.

Q. Was it recorded? A. I believe that it was recorded by them.

Q. By what? A. By them.

Q. By them in their own handwriting, they were making notes? A. I think—I don't know. Maybe you would (366) call them notes, but I know eventually that entire statement was recorded into one statement.

Q. How many statements that you made were recorded into the one statement? A. I don't know. I couldn't answer you. Quite a few.

Q. And was that taken by Mr. Klein? A. No, no. Mr. Klein had left the office by then, I think.

Q. Did Mr. Klein send for a stenographer and question you? A. I don't believe he did. I believe Mr. Costiglio did the questioning.

Q. Did Mr. Costiglio have a stenographer who recorded the questions that were put to you and the answers you made? A. I don't think it was that type of statement. It was more of a—not a question and answer statement. It was a——

Q. Running statement? A. A statement of fact. The statement that I gave. It wasn't a question and answer statement.

Q. In other words, you were told to give certain facts and you made the statement? (367) A. Made the statement.

Q. To whoever examined you, and in this case you say it was Mr. Costiglio, in the presence of a stenographer, is that right? A. That is right.

Q. And the stenographer recorded it? A. I believe quite a few stenographers reported it because that statement was about 50 pages.

Q. That is the statement you say Mr. Costiglio took? A. Mr. Malinky took it with Mr. Costiglio or Mr. Costiglio with Mr. Malinky. All I know is I gave them a statement.

Q. They each asked you questions? A. Well, they wanted to know certain affairs that had taken place, and my lawyer Mr. Cutler told me to tell the truth and clean up all these things and get it off your chest, so I did. I am sure Mr. Hallinan has that statement if you want it.

Q. Will you get it for me if I want it? A. If the Judge gives it to you; he is the boss.

Q. You said if I wanted it. This statement that you just referred to, was that the only statement (368) you made? A. I have made statements from time to time, yes.

Q. Was it any different? If you had one statement with everything in it what need was there for an additional statement?

Mr. Hallinan: I object to it. It is argumentative.
The Court: Yes. I sustain the objection.

Q. You say there were other statements, I think you said that. If I am wrong, tell me. A. The other statement was for the place that I said was Cavalier's; it may have been Morgan's Restaurant, not Cavalier's Restaurant. It was a mistake, not in fact but in place and in time. And when certain incidents refreshed my memory I says, "Yes, right, it wasn't there, it was there."

Q. Is it your position or do you say to us that what occurred was this, that you made one statement and that any later statement which you made only was for the purpose of making some corrections? A. No, no, I don't say that. I say I made several statements, I made a lot of statements. But——

(369) Q. For the same subject matter? A. Pertaining to bonds, to stolen bonds.

Q. For the same subject matter? A. No, it was quite a lot of robberies. It wasn't one matter of Mr. Chernoff; it was all different types of bonds that were stolen that we had passed and cashed, that I told him exactly what happened and made a clean breast of it.

Q. How many banks outside ~~of the~~ Pennsylvania Exchange Bank did you pass these bonds on?

Mr. Hallinan: I object, your Honor. We are getting back into that area.

Mr. Rosenbium: I am entitled to the number.

Mr. Hallinan: No, you are not. I think time and time again we have touched on this, and here we go again. May we come to the bench, your Honor?

The Court: Very well.

(The following proceedings took place at the bench, out of the hearing of the jury.)

Mr. Hallinan: On this question of how many other banks did you pass stolen bonds at, the next question is for the details. I don't think we should

get into this area at all. And this question is directly in that area.

(370) Mr. Rosenblum: I think the ends of justice require, since the impression could very well be left that everything he has referred to has gone through this bank in the way he has testified, and I think we are entitled to go into detail. I do think that since this is a matter of discretion we come to occasions when I respectfully suggest that the discretion should be exercised and avoid the possibility of leaving an impression which is not a fair one.

I am not asking this question because I don't have a basis for it, or that I am trying to put in a question something uncalled for, but I do think that to avoid the possibility of leaving the thought that everything he is testifying about went through the Pennsylvania Exchange Bank, we have a right to bring that out.

Mr. Hallinan: In direct response to that statement that the impression has been left, I did not develop any of those areas. The impression has been left, if it has been, through Mr. Rosenblum's own interrogation.

The Court: My own disposition is to let you ask this question. The one thing that I am sure I (371) don't want to get into is what happened at other banks, as to whether they were convicted or acquitted, or whether they got fired or not, or whether they were duped or whether they were not, because then you aren't going to this man's credibility. You are attempting to argue that because it was wrong in one case it was wrong on the basis of a pattern rather than just because he is a liar. You can go ahead on this-

Mr. Rosenblum: I don't want to abuse it. I don't want to say something which later you might feel I am saying in order to get a thought across. If you can give me some idea——

The Court: He has already told you all kinds of criminal acts, and this is whole business is now getting cumulative. He has confessed to you that I guess it was from 1945 on he got into one thing after another. As far as the fact that he was an out and out dishonest person during that period I think you have established it. I don't think he denies it. There is a question in my mind how much further to go before you get away from the material issue in this case. I will allow you to ask whether these were (372) all in this bank or whether there were other banks involved. I am not disposed to go much further. Is there any particular thing that you want to get into?

Mr. Rosenblum: I would like to establish the number of banks, names of the banks. I think I can go into the details of about the period of similarity——

Mr. Hallinan: I am afraid if your Honor allows him to go into these banks that I can, promptly, on redirect, have this witness explain because Mr. Rosenblum knows better than I do the impressions that are going to be left. And the impression is, without going into the details, he is going to get into as many details as he can that this man duped other banks, and we get into that the moment the first question is asked.

The Court: Then you are getting away from the fact that he was dishonest during that period. You are getting into the fact that somehow this was a

justification for this defendant because other banks got stuck.

Mr. Rosenblum: No.

The Court: I will let you ask how many (373) banks, but that is about the end I think.

(The following proceedings were held in the hearing of the jury.)

By Mr. Rosenblum:

Q. In connection with your dealings in stolen bonds and stolen securities and burnt money, those things that you have told us about, tell us through how many other banks you put through the same—you did the same thing as you described as being in the Pennsylvania Exchange Bank, by number. Don't give us the names, but give us the number of banks. A. I don't remember.

(374) Q. Would you say it was ten? I will suggest names to you. Think of it and see if you can give us a number.

Mr. Hallinan: Something occurred to me quickly. I don't want to mention this in front of the jury, your Honor.

The Court: Come on up.

(The following occurred at the bench not in the hearing of the jury:)

Mr. Hallinan: The last question included the very matter—if it is opened I am going into it whole hog. The last question was: In how many other banks did you do the same thing.

That question includes everything that was done at the Pennsylvania Exchange Bank.

Mr. Rosenblum: Would this be proper—does it come within the ruling: You say you had dealings

on certain things. With how many other banks did you have dealings on the same things?

Mr. Hallinan: That is inclusive, too.

The Court: I think I will keep out of this. I will sustain the objection and we won't even go into the number. I will let it stand as it is—"I don't remember." That is where we will let it stand without going (375) into particulars.

(Proceeding were resumed within the hearing of the jury as follows:)

By Mr. Rosenblum:

Q. When did you last see the statements that you described that you gave to the various assistants and agents that you testified about?

Mr. Hallinan: I am sorry, your Honor. May we have more specific questions than this?

Mr. Rosenblum: I will break it down.

Q. When did you last see the statements which you gave to Mr. Milenky? A. A couple of weeks ago.

Q. And how many statements did you see at that time? A. This master statement I was talking about.

Q. And will you tell us which one you are referring to? A. Master statement, I said.

Q. You haven't used the word "master" before.

Are you referring to the one made in front of Mr. Castiglia? A. The one I made with no questions and answers. I just gave a statement.

(376) Q. That is the one you say you made when? A. About three years ago.

Q. And then after that you—did you make additional statements? A. From time to time I made additional statements.

Q. Other than the corrections that you referred to as to subject matter, as to matter, facts? A. Yes, I made additional statements.

Q. And did you make such additional statements to Mr. Milenky? A. Yes, I did.

Q. And were these statements different than the statements which you previousiy made? A. No, they were added to it. There were some more facts to it.

Q. You did not change anything in the master statement at any time? A. No. The only thing that was changed in the master statement was the change of places——

Q. Corrections. A. They wouldn't even let me correct it. I wanted to correct it. They said, "You can't correct it." I wanted to correct it.

Q. Did you make any statements to an agent by (377) the name of Motto? A. Who?

Q. Motto.

The Court: Let me clarify one thing.

When you say they wouldn't let you correct it, you mean physically?

The Witness: Yes.

The Court: They let you give a supplementary statement?

The Witness: That's right. They wouldn't let me mar that original statement.

The Court: Go ahead.

Q. Did you make any statements——

Mr. Hallinan: This is the question about the statement to Carmine Motto——

Mr. Rosenblum: Yes, sir.

Mr. Hallinan: I will object to this on the grounds of irrelevancy.

The Court: I think this would be a good time to go to lunch. On rainy days if you get a fifteen

minute start on the other judges, the better chance of your getting your lunch without waiting. So we will recess now and resume at 2 o'clock. Don't discuss the case.

(Jury leaves courtroom.)

(378) Mr. Hallinan: Your Honor, with respect to the statement to Carmine Motto, I want to inform your Honor that Mr. Mishel has probably made statements to other investigative agencies that have nothing to do with this entire matter.

This Irving Mishel, as he said from the stand, was in criminal activity from 1945 up through the date when he was arrested. There are many investigative agencies interested in information that this man has and his records and so forth. I do not think that we should go off into an extended inquiry, unless Mr. Rosenblum wants to make a specific offer of proof of what he plans on developing by this. As far as I can see, it has nothing to do with this.

The Court: I do not quite get it. You are raising a question of credibility but you are not claiming privilege on behalf of any prosecutorial agency, in other words, the disclosure of these facts will not frustrate a prosecution?

Mr. Hallinan: In one case I can think of, it might very well, yes, your Honor.

The Court: Well——

Mr. Hallinan: Because Mr. Motto, I know, was interested in other bonds that have nothing to do with (379) this particular case.

The Court: Do you mind telling us, Mr. Rosenblum, where we are going on the Motto thing?

Mr. Rosenblum: You will recall it is in the memorandum that we submitted for the Court only.

Colloquy of Counsel

The Court: I do not think Mr. Hallinan has a copy.

Mr. Rosenblum: No. Your Honor suggested we give it to you only.

The Court: Here is a situation where we had probably better discuss it with Mr. Hallinan, with the Court's understanding this is not to be mentioned to the witness.

Mr. Perry: Your Honor, our information is that since 1953 Mr. Mishel has purported to have literally inexhaustible information about things, which, when investigated, at least in the instance we know of, were shown to have been false. In two instances, we called to your Honor's attention in the offer of proof, we have information where the leads—three—the leads he provided were shown to be false. We would like to ask him about it. Why do we do it? To show his bias and interest. He wants out of jail and I respectfully suggest to your Honor he wants out so badly he is willing (380) to put people in that should not be in. It is aside from this case. It is just on the information I put in the offer of proof.

The Court: Inasmuch as you may want to go into the other thing, this is covered by III of your offer of proof.

Mr. Perry: The name of the person we would prefer not to go into.

Mr. Hallinan: I cannot intelligeatly approach this.

Mr. Perry: May I say this——

Mr. Hallinan: We might save an awful lot of time. Would your Honor allow the Government then to go into the leads that Mr. Mishel has given

us and turned out accurately to rebut, which I think we would be entitled to?

Mr. Perry: I may be out of line in this suggestion, your Honor, but as to III (c), if we were to disclose the name of the person—I will have to check with Mr. Rosenblum, but my understanding is might it be understood he would not be questioned by any of the Government agents prior to the time we may call him as a witness?

The Court: Let us discuss this in an abstract (381) manner for a minute.

Mr. Perry: Yes.

The Court: You think if you cross-examine him you will say, "I was wrong in that situation"?

Mr. Perry: The information we have, Judge, is that that is so. I really cannot say with a hundred per cent accuracy that the result will be that, but the information we have is so. We never knew the name of Motto before we got this source of information, and apparently there is some validity to what we say because it is apparent Motto was conducting bond investigations as well. The person whose name is in III (c), your Honor, we would plan on calling him as a witness.

The Court: I do not see how you are going to call him.

Mr. Perry: On something else, perhaps.

The Court: That is a different problem. Whether you could produce independent evidence on that issue, I would doubt.

Mr. Perry: Except, Judge, when we were discussing this memo we provided to you and what is collateral and not collateral, questions showing interest of a witness is not collateral, I respectfully submit. We could produce other instances which

would show that he so anxious (382) to get out that he might be reckless about what he says as to others.

The Court: We have a problem here of the cumulative nature of this. He tells us from the stand that he is very interested.

Mr. Perry: We could pin-point, Judge. It is one thing to be interested abstractly, but if we could show you: Honor one case in which we might produce the witness—in two other cases we have information, but if we could show this man was so anxious to put other people in——

The Court: Why don't you try out that other case?

Mr. Perry: The one case we can produce the witness, Judge? I don't know.

The Court: Let us assume this is the way it turns out, that on cross-examination he maintains he was right, you think he was wrong, and therefore, you produce a witness to contradict him. Then Mr. Hallinan may be in a position to produce six witnesses to contradict your witness and the we will be here for sometime.

Mr. Perry: We can produce the one witness who will say he was wrong.

The Court: How do we know your witness is (383) telling the truth?

Mr. Perry: I have no personal knowledge who is telling the truth.

The Court: That is the problem. Then we put before the jury a controversy between two persons on a collateral issue of fact, and that is what I do not think I should do.

Mr. Perry: Judge, it would seem to me that in any instance where we can produce proof before your Honor that this witness is so interested in

getting himself out he puts other people in, it may be that evidence we put in might be subject to other claims that it is not true. I would respectfully think in a case like this the whole thing should go to the jury, then. We should not be denied the right to show that in at least one instance he perjured himself.

The Court: I am disposed not to take the independent proof on that, and I do not want you to be in a sense trapped by getting off into cross-examination that you cannot follow up with independent proof, if that is what you planned. I do not think I will take that independent proof because we would simply then have a controversy on an immaterial point. I mean the fact whether someone is guilty in another case is immaterial. (384) The whole build-up of credibility, of course, is immaterial, but each instance from which it is built up is not.

I think that this gets into the general criticism of this type of proof, and I do not think I will go beyond the cross-examination. I am disposed to let you cross-examine on it, if you want, but that will be as far as we will go on it.

Do you have anything further, Mr. Hallinan?

Mr. Hallinan: I cannot see anything further, because your Honor and Mr. Perry have knowledge that I do not have. I do not know what area they are going to inquire into so that I could make——

The Court: Well——

Mr. Hallinan: I can think, from the question, itself, of any objections I might make.

The Court: I think you ought to let Mr. Hallinan have the offer of proof in this regard, Mr. Perry. We are not going to get off into calling witnesses.

Mr. Perry: May I suggest this: We may pos-

sibly call that person as a witness—it is an open matter—as to something else. Now, Mr. Hallinan—I am not saying this to impute anything to him, but I think it is safest for all—we are interested in protecting (385) the defendant's rights—might it be understood that this witness would not then be questioned by the Government as to any matter—because we would call him as a witness as to some material aspect of the case—until after he is put on the stand?

Mr. Hallinan: This is strange in view of the fact that they called at home yesterday and asked if I had any objection to them examining Sam Siegel.

Mr. Perry: Except the witness wanted your permission first.

Mr. Hallinan: If that is their view, I will ask for an instruction from your Honor that they stay away from all my witnesses, which your Honor can not give.

Mr. Rosenblum: I do not think there is such a thing as a witness for the Government and a witness for the defendant. We called and the man said he would not talk to us before he got your permission. That is the reason we called you.

The Court: If the defendant does not want to make this offer of proof available to the Government, we will go ahead on a question by question basis, and as you see trouble, Mr. Hallinan, you call me and we won't try to resolve the question now, we will resolve (385a) it then, but I resolve it to the point of telling you my present disposition is not to take independent proof on any of these collateral acts of misconduct.

(Adjourned to 2 p. m.)

(386) AFTERNOON SESSION

(The following occurred in the courtroom, the jury not being present.)

Mr. Perry: Your Honor, before you call the jury, I am a little uncertain about your Honor's ruling as to our offer of proof. The last few words was we would take each one when we come to it, and your Honor would decide when we come to it.

The first part of the offer of proof dealt with we wanted to go into the question of these other transactions in other banks.

The Court: I think we really covered about all of that that there is any value to.

Mr. Perry: If your Honor's direction was to take each one and then rule on it, do you mean we should make an offer as to that or you have ruled on that?

The Court: My rulings are pretty clear on the bank transactions, but I was talking about III (a), (b) and (c).

Mr. Perry: Your Honor, may I, for the record, because after we are finished with this I would like to have this marked as Defendant's Exhibit A, (387) you know, may I for the record——

The Court: Here——

Mr. Perry: Do you want to give it back to us?

The Court: Do you want to put it in as an exhibit or my exhibit? Any way you want.

Mr. Perry: As a Court's exhibit might be better.

(Marked Court's Exhibit 2.)

The Court: That is the offer of proof.

Mr. Perry: That is the offer of proof, your Honor. Actually, then, your Honor's ruling as to subdivision (b) under I, which deals with the other bank transactions, you feel that we should not proceed further in that?

Colloquy of Counsel

The Court: I do not think we should go any further than we have. You missed part of the colloquy that Mr. Rosenblum, Mr. Hallinan and I had, but I think the net of it was that we have gone about as far as is profitable; if we go any further, Mr. Hallinan is then going to be able to come back with questions of his own, and I think we are going to spend a substantial period of time trying facts unrelated to the main issues of the case and it will not be helpful (388) to the jury.

Mr. Perry: It is offered for two reasons. I think when Mr. Rosenblum was questioning Mr. Mishel about these bank frauds in other banks he asked him whether Mishel claimed that Miller was a participant in them, and my recollection is he asked him as to one—I think maybe it was Bankers Trust Company or something—and Mr. Mishel said no; and then he asked him as to another one and at that time Mr. Hallinan objected on the theory that we were going into bank transactions which your Honor wanted left out. We would like to pursue it along those lines.

The Court: I do not think there is any basis for suggesting Mr. Miller had anything to do with any bank other than his own.

Mr. Perry: Except they were speaking of this partnership business.

The Court: That was Mr. Rosenblum's contribution, I think.

Mr. Perry: Your Honor's feeling, then, on (b) would be that we should not proceed further there?

The Court: Yes.

Mr. Perry: As to H, the modus operandi (389) of Mishel, where we would expect to elicit from him the fact that it was his practice to ingratiate himself with bank officials and then use them, that

would involve going into the same bank transactions and I assume your Honor's ruling would be the same.

The Court: I think as to the technique for ingratiating himself—for example, in Virginia—he may have taken advantage of an innocent person. There is no reason for arguing that is what he did here.

Mr. Perry: Judge, our thought would be to show that Miller was his dupe also.

The Court: That is the very thing that I think is an improper use of independent transactions, completely separate transactions.

Mr. Perry: As I noted, your Honor, under modus operandi we would expect to prove our contentions from Mishel himself on the stand. It would not be a question of producing other witnesses on our part.

The Court: If Mishel on the stand said, "I duped John Smith in Lynchburg, Virginia, by stiff accounts and with stolen bonds; I used him; he didn't (390) realize it," you would have no proper basis for arguing that is what he did with Miller.

Mr. Perry: Then, Judge, the last one is——

Mr. Rosenblum: Your Honor, would this be the same for the number of banks?

The Court: Yes.

Mr. Perry: And as to No. III, this is the point we are left with now, your Honor's feeling is you would take each one as you came to it?

The Court: Yes. Inasmuch as I have ruled on this, only III is still before us. I think Mr. Hallinan ought to have a chance to see it, because he ought to know what I am doing to the record he may have to defend some day.

Colloquy of Counsel

Mr. Perry: May I speak with Mr. Rosenblum?

Mr. Hallinan: May I look at it, your Honor?

The Court: You may want me to let in some of these things that I am now in the process of finally ruling out.

Mr. Perry: What is your Honor's preference?

The Court: I would like Mr. Hallinan to see this if you see no prejudice to the defendant.

Mr. Perry: Do you want our position?

(391) The Court: I would hear you if you do not want to disclose it.

Mr. Perry: Since your Honor has ruled on I and II, I see no problem there.

Mr. Rosenblum: May we have an exception?

The Court: Surely.

How do you want to handle this mechanically? Have you got an extra copy?

Mr. Perry: I will take a copy of this.

The Court: Take page 5 off, which you feel might give him an unfair advantage in cross-examining a potential witness.

Mr. Perry: I have given him, your Honor, a carbon copy of everything up to but not including III.

The Court: All right.

Mr. Hallinan: I will read this through, but if they are making an offer of proof to the Court that one side cannot see, I do not see how I can intelligently approach that.

The Court: It certainly puts you at a disadvantage.

Mr. Hallinan: It certainly does.

The Court: Nothing has gotten in yet.

(392) Mr. Hallinan: I feel we are in such an area that the constant and r etitious putting of ques-

tions is going to bring about much of the prejudice that I might seek to avoid if I knew——

The Court: Is there an item in here that you can use on cross-examination of a witness?

Mr. Perry: All three of them we will use against Mr. Mishel, if you permit us.

The Court: That is all right. You are at the point now where you have to tell Mr. Hallinan what you expect to develop on that, because you are about to put the questions.

Mr. Rosenblum: I understand your Honor's direction that we show it to him, so I will do it.

The Court: I will permit him to see III.

Mr. Hallinan: May I see that copy so it will be mechanically easier to manipulate?

Mr. Rosenblum: Mr. Hallinan mentioned repetitious questioning,—the jury is not here so we can discuss this to see if there is any soundness to my position—where you get a witness who gives you an answer which is definite as to a date, time and other thing. I think where we get a series of "I don't remember," "I don't remember," except in certain (393) things that the witness obviously cares to remember, I think I have no choice but to press him and repeat the question.

The Court: I have not given you any general ruling on that.

Mr. Rosenblum: I know your Honor has not, but Mr. Hallinan has just said in the light of the fact that these questions become repetitious—I know I go back into the subject. Sometimes I go off and then come back into the subject again hoping there is something else I may have questioned him about which will then enable the witness to give me an answer; and the fact that he says "I don't remember," "I don't know," "I don't remember," ob-

viously I just can't sit down the first time without trying to probe why he does not remember or without giving him something that may help him give me some answer. I think it is different from the usual case where you have an answer and go over it again just to have it repeated.

The Court: I won't generalize for you any more than I did for Mr. Hallinan.

Mr. Hallinan, why don't you look at III. That is the only thing left open. If you want the (394) other things in, I will hear you, but I do not think I will do it. However, on III I will hear you.

Mr. Hallinan: With respect to III, I think this offer of proof has to be judged in the light of what we already have before this jury. We have a man who admits to four convictions, who admits to desiring some consideration here, who admits to being a criminal from 1945 on, to being a bad boy. He even objected to the word "decent" when Mr. Rosenblum asked, "Were you a decent business man?"

He said, "I didn't say 'decent.'"

The Court: This goes to the very specific question of making false accusations.

Mr. Hallinan: Yes, but once we get off—I think they have had terrific opportunities to cross-examine this man on the issue of credibility on matters related closely enough to the facts in this case so that it sheds light on the issue here, which is a false statement case made by Mr. Miller.

As I told the jury, and I did it for a very specific reason, to keep in mind constantly during this case that we were charging the defendant with making false statements, because this is the type of case I think that it is very easy for the jury to (395) confuse, they will think that the basic case is a bond case, which it is not, I think to get off into these

three areas, we are necessarily getting close to a situation where I would then be entitled, and I am not so sure they can ask too many of these questions without getting into that area, where I am entitled to—on these three situations—offer some kind of evidence as to the truth or falsity, especially in a case like this, where you have a defendant who has much of his background, the illegal activity he engaged in before, now before this jury. I think there is a tremendous tendency in circumstances such as these, even if your Honor limits it to the mere asking of a question and an answer to that question——

The Court: We will have to rule on each question as we go along.

Mr. Rosenblum: In the light of what Mr. Hallinan said as to the kind of case, I first point out to your Honor and I respectfully ask that you consider the fact that when he says this is not a bond case, just a false statement case, on his direct examination when he finished, he ended up setting up (396) an alleged partnership between Gallagher, Miller and Mishel, and then went into the question of the bonds as being part of that partnership. I think if that is true——

The Court: I do not think I agree with you. Let us get the jury in now and let us get on with it.

Mr. Hallinan: Just one more remark I meant to make. I am sorry, but it just occurs to me now.

In this (b) under III, I think there it is clear we are not in an area where they are alleging that the defendant made a false statement. We go into a further area where the defendant, they claim, is urging somebody else to make false statements. That is not a false statement. It is reprehensible conduct, it is true.

The Court: Let us hear what happens on cross-examination.

Mr. Rosenblum: I can go into No III and your Honor will rule?

The Court: Question by question.

(The jury entered the courtroom at this time.)

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(397) Irving Mishel resumed.

Cross examination continued by Mr. Rosenblum:

Q. This Chernoff deal that you testified about, about your talks with Mr. Miller, was that supposed to be a secret between you and Mr. Miller? A. Well, it was more or less of a secret between us.

Q. Was it understood it was to be told to other people? A. Well, I had to tell Mickey about it. He was the one that signed them.

Q. Anyone else? A. I don't remember what you are driving at, sir, by "anyone else."

Q. You told us about the first occasion when you say you received the eight hundred-odd dollars after the first bond or bonds were cashed; do you recall that? A. The first bond was a thousand-dollar bond, I believe.

Q. And you received eight hundred-odd dollars and you gave Mr. Miller, you say, a hundred dollars? A. Correct.

Q. Let us take the second occasion. When did (398) you settle up on that? A. I believe right after that.

Q. You say you believe. Do you have any recollection? A. All my recollection is that after all eight or six or ten transactions went through, I gave him 10 per cent of the total amount.

Q. At one time? A. I may have given it to him in six times, eight times or four times, I don't recall, but I do recall——

Q. Or on one time for the last seven? A. No. I do recall giving him more than one time money, but I do

know at the end, after they all were cashed, that we were even as far as moneys were concerned.

Q. Can you give us any more definite recollection as to whether it was, say, on three occasions all together? A. I just can't say how many. I know I paid him in full.

Q. Did you yourself pay him? A. Yes, I paid him for those.

Q. You personally paid him in each instance? (399) A. In each instance I believe, to the best of my knowledge, I paid him.

Q. And you gave him cash? A. Yes.

Q. Right in the bank? A. Sometimes I would meet him across the street. Once I think it was Park Avenue and 59th Street there is a small bar in the hotel there. I met him and gave him some money there.

Q. Did you call him and tell him to meet you there? A. No, he told me to meet him.

Q. And on that occasion was it in connection with paying money for one of these Chernoff bonds? A. Yes.

Q. You recall that detail? A. I recall giving him some money.

Q. How much did you give him at that time? A. I don't recall.

Q. What particular cashing was covered at that time? A. Chernoff. Maybe 100, $105, $95.

Q. And the bank was at 48th Street and what avenue? (400) A. I think it was near Fifth Avenue.

Q. And in Rockefeller Plaza? A. Rockefeller Plaza. It is a street on the side.

Q. You met him at 59th Street, you say? A. I believe he lives near there or something. He said, "Meet me there," and I met him.

Q. To give him that $105? A. I may have given him for two sets of bonds. I don't know.

Q. What is your recollection? Don't you remember? A. No. All I remember is paying him, Mr. Rosenblum.

Q. Can you tell us where you paid him on each of the other occasions that you claim you paid him? A. There is a building across the street from the bank. I met him in the lobby of the building there at one time. I think it is the Time and Life Building.

Q. Where did you meet him in the Time and Life Building? A. Right in the lobby. You can't miss it. It is facing the bank. It is a side street, like. (401) The bank is here and the street comes this way (indicating).

Q. Was that for the purpose of making a payment in connection with the Chernoff bonds? A. Yes.

Q. And how much do you say you gave him on that occasion? A. I don't know. Maybe a hundred dollars, maybe for two sets or maybe for three. I don't recall exactly.

Q. Any reason why you could not give him that hundred dollars and the $105 right in the bank? A. Sometimes I did.

Q. Was there any reason you could not give it to him on those two occasions? A. I don't know. I just know I paid him, that's all I do know.

Q. Did you ever have anyone present at the time you paid him? A. Well, there were plenty of tellers there.

Q. In other words, you paid off in the presence of tellers; you paid off the money to Miller as his cut in this agreement that you say you had for him to assist you in putting through these Chernoff bonds? A. I paid him.

(402) Q. You say you paid him; is that right? A. I did pay him.

Q. That is what you say? A. That's right.

Q. Now, can you tell us where, exactly, in each instance? A. I can't tell you where in each instance. All I can tell you is I paid him.

Q. Can you tell us a single person who ever witnessed anything like this? A. No.

Q. No? A. Not that I know of.

Q. Do you remember when you appeared before Judge Joseph in the Bronx? A. When?

Q. In connection with the time when there was an adjournment given to you so that you could obtain new counsel in the place of Mr. Bierman. A. Vaguely.

Q. What is that? A. Vaguely. I don't remember the instance too well.

Q. About when would you say it was? (403) Would the date of February 20, 1953, be about right? A. It could be.

Q. Do you remember you testified about your lawyer telling you to cleanse yourself, so you went before McAvinue and you told him everything; right? A. That's right.

Q. Was that before you appeared before Judge Joseph, which was after you already had been sentenced below, and that is in New York County? A. I believe it was.

Q. Now, by that time had you already told the authorities everything? A. No.

Q. You had not? A. No.

Q. So that is it your testimony now that the statement that you gave to Mr. McAvinue was not complete? A. That's right. There is part of it I lied to him.

Q. You lied to him; is that right? A. I did.

Q. Now, can you tell us what part you lied about? A. I just lied to see if I could get some additional time to try to cover up these things, but (404) I don't recall what I lied about.

Q. Have you no recollection of what it was? A. No.

Q. None at all? A. I sent him on a goose chase some place or other—wild goose chase.

Q. Which one? A. I don't know.

Q. Have you talked to anyone since I have been cross-examining you in this case? A. Yes, I did.

Q. Mr. Malinky or anyone else? A. Yes, I talked to Mr. Malinky.

Q. About this wild goose chase? A. No. All he told me is, "Tell the truth. Don't worry about anything, don't worry if the Government case stands or falls or anything. Just tell the truth." And that's what I intend to do.

Q. He told you you have no worries; is that right?

Mr. Hallinan: I object.

Q. Isn't that right?

The Court: Sustained.

Q. When did he tell you not to worry about it? A. He didn't say it in those words, Mr. (405) Rosenblum. He said, "Tell the truth, and if somebody asks you, you say I said to tell the truth," and that's what I intend to do.

Q. What did he tell you about not worrying? A. He didn't put it in those words, Mr. Rosenblum.

Q. You used them, didn't you? A. Those are my words. He just said, "Tell the truth."

Q. You interpreted what he told you to mean you have no worry; is that right? A. No.

Q. Or that you have no worry, you should not worry about the outcome? A. No. All I interpreted it is to tell the truth. Mr. Hallinan said the same thing.

Q. What did he say about your worrying about your telling the truth? A. That's words of mine, not words of his.

Q. Do you remember when you were indicted in New York County? A. It was some time ago.

Q. Do you remember whether it was January 31, 1951? A. I don't know the date.

(406) Q. Can you tell us whether or not you told Mr. McAvinue what you testified heretofore in this trial as

all the facts before or after that date, January 3, 1951? A. I can't tell you either way; I don't remember exactly what I told Mr. McAvinue.

Q. How long did you continue to lie? You said you lied to Mr. McAvinue. A. That is right.

Q. How long did you continue to lie? A. A couple of months. I was trying——

Q. Was it a couple of months after you were indicted in New York County? A. I believe so.

Q. If the record shows, accepted subject to correction, it was January 31, 1951, would you say it was several months after that? A. I can't be sure exactly. All I know is——

Q. Go ahead. A. All I know is when Mr. Cutler told me to tell the truth, I respected his judgment and told the truth, and from there on in I told the truth.

Q. Didn't you testify that a time came when you were with Mr. McAvinue when Mr. Cutler came in? He is (407) a cousin of yours, isn't he? A. Pardon me. Mr. Bierman was my lawyer for these scenes.

Q. What is that? A. Mr. Bierman was my lawyer on that matter.

Q. I said, Mr. Leo Cutler is your cousin? A. That is right. That was after, that was two years later that Mr. Cutler came into the picture.

Q. Is it a fact then that over a two-year period the statements that you made to Mr. McAvinue had lies in them? A. A few lies. But in substance it was the truth.

Q. You mean that is your determination of that, isn't it?

Mr. Hallinan: It is also his determination that the question asked him about lies, of course.

The Court: All right. Don't argue.

Mr. Hallinan: I will object to that question.

The Court: What do you want done? Overruled. Go ahead.

Mr. Hallinan: It is too late.

Q. As late as 1953 had you told the truth to the authorities? A. 53? Yes, I believe in 1953 I told the truth.

(408) Q. How about the year 1952, had you told the truth? A. I don't know. I can't answer that. But 53 I did.

Q. For instance, when you were before Judge Joseph, by that time had you told the truth when you were switching lawyers? A. That is about the time.

Q. In other words, by that time you had told the authorities everything you knew and everything you recalled? A. Up until a point. Then they came up and they told us other things that we had done, and if I did it I confessed to it.

Q. You mean you only confessed to things when the authorities brought them to your attention? A. We did so many things that I didn't confess to the things that I didn't even remember myself, and when certain points were brought up and certain names were brought up, I said, "Gee, we did that, too." So I admitted it.

Q. Isn't it a fact that you said to Judge Joseph as late as February 20, 1953, that you told the authorities more? A. I did tell the authorities more after that.

(409) Q. Isn't it a fact that you told that to Judge Joseph at that time? A. I did tell the authorities more after that.

Q. Do you recall whether or not this happened on [illegible] occasion when you were before Judge Joseph on February 20, 1953? Now, tell us whether the following occurred: "The Court—" that is Judge Joseph, "According to the report you still have lots of information.

"The Defendant: Yes, I have, and I will give it willingly and unhesitatingly."

You told him you were an orphan and all that. Do you recall that? A. I don't recall that conversation, but I did subsequently make further statements. What you call statements, I mean oral statements, had interviews, I had

lots of them. But they weren't statements; I had interviews.

Q. You told us this morning that a couple of weeks before this trial you were shown and you read what you call your master statement; do you recall that? A. Yes, sir.

Q. Do you also read the statement you gave to Mr. McAvinue? A. No, sir.

(410) Q. When did you last see that statement? A. I never saw that statement.

Q. Do you know whether or not that statement is in the possession of the Government? A. I don't know one way or the other.

Q. In addition to the statement that you call the master statement, in the last few months, even prior to this trial, were you shown the statements made by you to any Federal agent, other than the master statement? A. What you call statements I call oral statements. I may have had an interview with an agent or agents and I have spoken to them. If you call them statements I don't call them statements.

Q. Were they reduced to writing in some form or other at the time? A. I don't know if they were reduced to writing or not. All I know is that I had many, many interviews with agents of the FBI, countless interviews, and I don't call them statements. The statement that I am talking about is the statement that I gave him about three years ago. After that they were interviews, not statements.

Q. Did you see them—I think you testified this morning about the subject, so I won't say what I recall your testimony to be—did you see the agents writing these (411) things? A. I have seen them make notations.

Q. Have you seen any of those statements? A. Not that I can remember.

Q. In the last few weeks when you saw the master

statement. A. I have seen the master statement in the last few weeks.

Q. Were you shown any other document other than what you call the master statement? A. I don't understand what you mean by any other document.

Q. Any other statement, a statement of any other witness, a statement made by Mr. Milenky, a statement made by Collins, a statement made by Motto, prepared by them or any other Federal agent? A. No, I haven't seen any of those statements, no, sir, none whatsoever. I seen my statement.

Q. You have told us that. That is the one you saw a couple of weeks ago? A. That is the master statement.

Q. That is the one— A. That is the big one.

Q. That is the big one, contains 50 pages? (412) A. It may have been forty, it may have been seventy. I don't know. I think it was about fifty.

Q. I was just referring— A. About fifty.

Q. You said about fifty pages? A. About that. It may have been more, it may have been less. Maybe it was more.

Q. You saw it recently, didn't you? A. A couple of weeks ago.

Q. Right? A. That is right.

Q. In that statement you say there was set forth by you everything that you knew concerning all these transactions you have testified about? A. That is right.

Q. Is that right? A. That is right.

Q. And anything that you have testified about is in that statement? A. Well, practically all of it is in that statement I would say.

Q. Pretty nearly all; right? A. Practically. There could be some isn't, some is; I don't know.

(413) Q. Who gave you that statement? A. Mr. Milenky and Mr. Hallinan.

Q. Did you take it home for any reason? A. No, I looked at it, I read it.

Q. Just to look at it? A. And I returned it to them.

Q. Just to look at it, was that the reason? A. I requested to look at it. I said, "I would like to see what I said three years ago."

Q. Didn't you remember? A. It is a long time ago; it isn't yesterday.

Q. Were you given the statement to read? A. I asked them, to read it, and they says, "O. K., we will let you read it."

Q. They didn't say to you, did they, "You rely on your recollection"? A. They did say that at one point, and I said I would like to read my statement.

Q. In other words, you insisted, didn't you? A. No, I didn't. I said I would like to read it. I didn't insist.

Q. So they gave it to you, is that right? A. That is right.

Q. Who gave it to you? (414) A. Mr. Hallinan there or Mr. Milenky or the FBI.

Q. Do you recall whether or not your testimony here conforms with what you read in that statement? A. Well, it is quite the same. It could vary a little. But in fact it is the same. In time it could be different.

Q. But the principal facts, you say, you recorded or you had the authorities record several years ago? A. The authorities recorded it.

Q. That is at your request? A. At their request.

Q. At their request you made a statement? A. That is right.

Q. At their request you made a statement which was reduced to this fifty page memorandum; right? A. That is right.

Q. That was several years ago when your recollection was better about things than it is now? A. That is right.

Q. You were then in a better position to remember times, dates and so on than you are now, which is three years later. A. I would say so.

Q. All right. Can you tell us whether or not it (415) was at about the time when you were indicted in New York County that you thereafter started to cleanse your soul and become a decent person? A. I don't remember exactly when it was.

Q. Well, did you commit any crimes after you were indicted in New York County? A. I may have.

Q. Don't you remember? A. I don't remember when I was indicted and I don't remember when the last crime was committed.

Q. Think back for a moment. After you talked with Mr. McAvinue and were cooperating with him, will you tell us whether or not after that time you committed any crimes? A. We may have committed some crimes; they may have had some bonds and had to get rid of them.

Q. You had to have some bonds that you had to get rid of? A. If we had some more bonds, we weren't going to burn them.

Q. You weren't going to throw them out, were you? A. Tried not to.

Q. This is after you had been indicted and you were cleansing your soul, you then went out and got rid (416) of some more hot bonds? A. This is before Mr. Leo Cutler came into the picture. Once he came into the picture that was the end of it.

Q. Leo Cutler is your cousin, isn't he? A. That is right.

Q. Do you remember a transaction in which you let Leo hold some stolen bonds as collateral for a deal? A. What bonds?

Q. Stolen bonds? A. Which stolen bonds? I don't remember any of that.

Q. Will you say you didn't? A. I don't remember, I said.

Q. And he is your cousin, isn't he? A. That is right.

Irving Mishel—for Government—Cross

Q. I think I covered so far your conviction and the assault, the 1897, possession of a blackjack or weapon, the details of the Alperin and the loans this morning. You recall that? Do you recall that? We have gone into the details on those.

Mr. Hallinan: Yes, I think we have, sufficiently so that they need no recapitulation here, your Honor. I object.

(417) Mr. Rosenblum: I am just drawing the witness' attention to the two remaining convictions that I have not touched on.

The Court: All right. Why don't we come to that and let the others go?

Q. You pleaded guilty, did you not, to two separate indictments in the Bronx? A. Yes.

Q. And that was before Judge Joseph? A. I believe that was the Judge.

Q. Can you tell us whether or not you pleaded guilty to six counts in an indictment in which you and Mr. Shatzberg conspired to commit forgery in the first degree and grand larceny in the first degree? A. In the Bronx?

Q. Yes. A. I remember I pleaded guilty, but I don't remember the circumstance.

Q. Well, do you remember Mr. Shatzberg? A. Yes, I know Shatzberg.

Q. Do you remember the Goldberg bonds of $4,563?

Mr. Hallinan: Your Honor, I am going to object on the ground that it is the fact of conviction that goes to the witness' credibility without going into——

(418) Mr. Rosenblum: I am just trying——

Mr. Hallinan: I know what you are trying to do,

Mr. Rosenblum. It is quite apparent, without going into all these specific details.

The Court: I will let him go on. Go ahead. Overruled.

Mr. Rosenblum: Would you read the question?

(Question read.)

Q. Do you recall that? A. I recall something about it.

Q. Is it a fact that you pleaded guilty to the crimes of forgery and larceny in the first degree that I just— A. I didn't plead guilty to no forgery in the Bronx.

Q. Was the charge there conspiracy to commit forgery in the first degree? A. In the Bronx?

Q. Yes. A. It was grand larceny in the first degree.

Q. Did you plead guilty to the crime of grand larceny in the first degree— A. In the Bronx?

Q. (Continuing)—in connection with the transaction (419) I referred to? And I don't wish to repeat it at the moment. Is that right? A. That is right.

Q Now, in another indictment, will you tell us whether or not you pleaded guilty to the crime of grand larceny in the first degree before Judge Joseph in connection with the cashing of bonds in the amount of $6,296.50, in the Bankers Trust Company? Do you recall that? A. I recall pleading guilty to two grand larcenies in the first degrees, but——

Q. Do you recall whether— A. What was the name on it?

Q. The name of the bonds, or the other defendant was Grace Pullian. A. Yes, I recall it.

Q. Do you recall it? A. Yes, sir.

Q. Did you bring Grace Pullian into this deal?

Mr. Hallinan: I object to that, your Honor.

The Court: I sustain the objection on that.

Mr. Rosenblum: I except.

Q. Now, will you tell us whether or not, and I think you already have told us—I think you said you (420) pleaded guilty to an indictment in this court, that is the Southern District, for a crime committed in another court which was brought here pursuant to a section of the law which permits transfer of cases? A. I admitted to that already.

Q. What was that about? Was that also bonds? A. Yes, sir.

Q. And did Sam Siegel also plead guilty, too? A. He pleaded guilty to the forgery of those bonds.

Q. He pleaded guilty to the forgery of those bonds and you pleaded guilty to what? A. I don't know what the charge was; something about transporting them or something.

Q. Was it transporting stolen bonds in interstate commerce? A. Something like that. I don't know the charge.

Q. That is the one for which you got a five-year sentence? A. That is right.

Q. Did you make any statements to any District Attorney or Assistant District Attorney up in Bronx County in connection with the things you have testified about? A. Yes, I think I gave them some statements.

(421) Q. Will you tell us, please, who you gave the statements to? A. Magistrate Francis X. O'Brien

Q. Was he an assistant at that time? A. That is right.

Q. How about Mr. Waltermede? A. I think he was an assistant also at the time.

Q. Do you recall about when you made those statements? A. Sometime in 53, I don't know exactly when, sometime in 1953 when Leo Cutler talked some sense into my head and told me to tell the truth and get this whole mess behind me. I think it was—I can't be sure, but I think it was sometime in 1953.

Q. In the light of your testimony so far can you now go back and tell us how soon after your arrest on the indictment in New York County on January 31, 1951, did

you make a statement to Mr. McAvinue in which you said it wasn't complete? A. I don't know, I can't answer that.

Q. Approximately how long? A. There is no way of me telling.

Q. In other words, it may have been even a matter of weeks or a month or two? (422) A. There is no way of me telling.

Q. It could have been— A. I can't remember, Mr. Rosenblum. It is something that I had no interest in, that I can't remember whether it was a week ago after I was arrested or a month or a year or two years, maybe longer. I don't remember. All I do know is that I did make statements to him.

Q. Can you tell us whether you made statements to any other assistant in New York County? A. I may have, I may have. I don't know. I may have.

Q. Can you tell us whether such statements were before or after you made to Mr. McAvinue? A. I don't know. It could have been before, it could have been after. It was around that time. Maybe before, maybe after. It is very hazy in my mind, those incidents of that. I would like to forget about them.

Q. You can't help us fix the date? A. I can't.

Q. Any better than you have just given? A. If I could, I would be very happy to.

(423) Q. Do you recall whether or not there was an occasion when you were waiting outside of a Grand Jury in this court to testify and you came in contact with Mr. Horan, one of the tellers in the Pennsylvania Exchange Bank at the time you were testifying about? A. May I hear that question?

(Question read.)

A. I don't recall one way or the other.

Q. You don't recall; you can't answer that yes or no? A. I don't know, I don't remember one way or the other.

Q. Do you know Mr. Horan? A. If I seen him I may know him.

Q. Otherwise you have no recollection? A. I know who Horan is. I don't think I have seen in maybe five years. If I seen him again maybe I would know him.

Q. Do you know whether at any time he was outside of the Grand Jury room the same time you were? A. He may have been. I don't know.

Q. Do you recall whether you had any discussion with Mr. Horan? (424) A. I don't recall having any discussion with him.

Q. You testified this morning about meeting Mr. Miller at Quo Vadis. Can you fix that date in some way? A. During the time I knew him. I met him there. I believe I took him to dinner there.

Q. You knew him, you said, from about 1946 on to the present time? A. About that.

Q. This is sometime between 1946 and today, is that right? A. Between 1946 and 1952.

Q. Well, will you see if you can get it down a little closer? A. I can't get it any closer. It was in that period of time I took him there to dinner.

Q. Did you go to Quo Vadis with him before or after the Chernoff transaction? A. I can't be sure one way or the other. I know I went with him.

Q. And you told the authorities, including Mr. McAvinue and Mr. Milenky and Mr. Hallinan, and Mr. Silverman and Mr. Castiglia and Mr. Peter Brown, and all the assistants, Federal and State, Mr. Waltermead (425) in the Bronx and Mr. O'Brien, all about these meetings with Mr. Miller?

Mr. Hallinan: I object to the form of the question.

Mr. Rosenblum: I will make it shorter.

Mr. Hallinan: All about these meetings, first of all, you can see there about twenty-five separate

questions. If he wants to break it down to a specific question——

Mr. Rosenblum: I will change the form of the question.

Q. Did you tell Mr. Milenky about your meeting with Mr. Miller at Quo Vadis? A. I did.

Q. And when did you tell him that? A. A couple of years ago.

Q. Did you tell it to Mr. McAvinue? A. I don't remember if I did or not.

Q. Did you tell it to Mr. Silverman? A. I don't remember. I don't know if I discussed it with them.

Q. Did you tell it to Mr. Peter Brown? A. I don't know if they discussed it with me.

Q. Did you ever fix the date for them as to when (426) that occurred? A. No, I just couldn't fix the date.

Q. You have fixed the date of the conversation that you say occurred where Mr. Gallagher and you were talking and Mr. Miller came in in 1946, 1947 or 1948, and I think one time you said it might be 1949.

Can you tell us whether you ever gave a date, a more definite date, to any official, either Mr. McAvinue or Mr. Hallinan or Mr. Milenky, or Mr. Motto, or Mr. Collins, or any of the assistants in the Bronx or New York County that we referred to before?

Mr. Hallinan: I object to the question on the ground that it includes about twenty-five questions. The first part I will object to the form because it incorporates something that is argumentative.

The Court: Well, what you would really like to know is whether he ever gave to any law enforcement official a date for the Gallagher-Miller meeting.

which you testified about, the time that you met the defendant.

The Witness: Shall I answer that?

The Court: Yes, if you can.

A. I did give them the date.

Q. What date did you give? A. I don't remember now, but I remember giving him (427) some approximate time.

Q. Then you gave him an approximate date by month and year? A. Just the approximate time.

Q. But was it limited to some month and year? A. I don't remember exactly. I know I gave them in my statement the approximate time that this incident took place.

Q. Did you give him what you testified here, 1946, 1947, 1948, and I think in one instance you referred to it as possibly being 1949? A. Some part of my statement may read that.

Q. Well, did you make that statement that way to them, or did you give them a more approximate time, fixing the year and month, say, if you couldn't fix the date? A. I don't remember how the statement read. The statement is available.

Q. In other words, if you gave a more approximate date you don't recall what the date is at this time? A. That is right.

Q. Did you give any law enforcement agency, and I am including New York County, Bronx County, and the Federal Office, Southern District of New York, any figure—did you give to any of the enforcement officers (428) of either New York County, Bronx County, Federal Office here an approximate figure as to the amount that you say you paid to Mr. Miller in connection with what you identified as stiff accounts? A. No, I didn't give him no figure.

Q. No figure at all? A. Just that $150 a month.

Q. You never gave them an amount? A. Pardon me?

Q. You never gave them a total or approximate total? A. Not that I remember.

Q. Did you, in connection with the Chernoff bonds give them a definite figure as to the amount you say you paid Mr. Miller? A. On that I gave them a figure.

Q. What amount did you tell them? A. 10 per cent.

Q. Straight? A. Straight 10 per cent.

Q. To the penny? A. Give or take a few dollars.

Q. Did you tell him as to the interest that the other people had in the percentages that you testified to (429) here at the time you made the statement to either Federal or State authorities? A. I did.

Q. What did you tell them was the amount of Nitzberg's interest in the moneys received from the cashing of the Chernoff bonds? What percentage? A. He had about 15 per cent, ntaybe 20, around that.

Q. What did you tell them? A. That is what I told them, just like I am telling you.

Q. What is the fact? A. That is the fact.

Q. Which? It couldn't be both, could it? A. We shared it after paying for the cost of the bonds, given Miller his cut, given Mickey for having signed them, Nitzberg and I cut the balance of the money up.

Q. What percentage was left after you took care of Mickey and Miller and Pace, from whom you obtained the bonds? A. Maybe 45 or 50 per cent was left.

Q. And 50 per cent or 55 per cent you divided among Pace, Miller— A. No, no.

Q. (Continuing)—and Rosenberg? (430) A. No. When we paid 15 per cent for the bonds, we paid 15 per cent of the face value which is maybe 25 per cent of the net value.

Q. That is what you said before. A. We got the money, 10 per cent of that net value went to Miller. We took off the original amount for the cost of the bonds. Mickey

got 15, 20 per cent for signing them, and me and Nitzberg took the rest of the money and cut it up.

Q. 15 or 20 per cent? A. Yes, for signing them. It amounted to about as much as we got, if you take a pencil and a piece of paper and figure it out.

Q. Do you recall that is what you testified yesterday, 15 or 20? A. Maybe 10 or 15; I am not sure of the figures. All I know is everybody was happy.

Q. In addition to the law enforcement officers I refer to, did you ever speak to any secret service agent outside of Sershen? A. I may have spoke to a lot of them.

Q. And Mr. Sershen, you say, you didn't give him a statement, is that right? A. Are you talking about the time of my arrest now?

Q. At any time. Did you ever give Mr. Sershen a (431) statement? A. Written statement?

Q. A statement which he recorded and that you made, any oral statement to him that you saw him record or an oral statement that he didn't record? A. I don't ever remember giving Mr. Sershen any kind of statement.

Q. Would you say you didn't? A. I never remember giving him any.

Q. How about any other secret service agent? A. Such as?

Q. Do you remember the names of any? A. If you can refresh them for me maybe I would remember.

Q. Wouldn't you remember any? A. I may know some other ones.

Q. How about Collins? Was he a secret service agent? A. Collins?

Q. Yes. A. I don't recall that name.

Q. What other name that you do recall, if you have a recollection of any agent that you talked with in the secret service—A. I don't recall——

(432) Q. (Continuing)—outside of Sershen? A. I don't recall the name Collins at all.

Q. Do you recall any names? A. No, but if you refresh my memory I may.

Q. Do you have any recollection of the names? A. Not that I remember.

Q. Do you remember that you did talk to a number of secret service agents? A. I have.

Q. Was that in connection with Chernoff? A. I don't recall what I talked to them about.

Q. Can you tell us about when you talked with them? A. I have spoken to them from time to time.

Q. During what years? A. During the last four years.

Q. How many years do you include in the last few years? A. The last four, five years, three years, I spoke to them.

Q. Do you know whether or not the statements you made to them with reference to the Chernoff transaction are the same as the ones, the facts are the same as those you testified to here in this courtroom? (433) A. I don't know what I made to them regarding the Chernoff bonds, I don't recall at all making any statements to them. If I am shown the statement I will be glad to tell you if it is true or not.

Q. Do you recall, Mr. Mishel, when you started to do time in connection with the sentence which was imposed upon you by Judge Mullin? A. The beginning of 1953.

Q. The beginning of 1953? A. I believe it was January, 1953.

Q. Do you recall whether at any time after or sometime after the date you gave, which I think you said beginning in 1953, while you were in the same jail with Wissenfeld, do you recall whether in order for you to obtain, to curry favor, to obtain benefits from the FBI, do you recall whether you urged Wissenfeld to give false testimony in another bond matter?

Mr. Hallinan: I will object to this on the grounds that I have indicated to your Honor before, that we are not only one area removed from the specific facts in this case but now we are two areas removed as without specification, and on the second ground that I think at this point in the trial it is cumulative.

The Court: I will let him answer the question. (434) Do you want the question read back?

(Question read.)

A. I don't recall that at all.

Q. You don't recall it? A. No, sir.

Q. No recollection at all? A. No, none at all.

Q. No? A. None at all.

Q. Do you recall whether while you were in jail you offered to give testimony in connection with the Jelke investigation and the ensuing trial in consideration for a parole, which was rejected because it was found to be untrue? A. I don't recall that at all.

Q. You have no recollection of that? Were you called down to the District Attorney's office in connection with your offer? A. Was I called down?

Mr. Hallinan: Just a minute. In connection with your offer, he hasn't got an answer on that yet, your Honor.

The Court: In other words, the question is objectionable as to form because he has never said he (435) made the offer, or has no recollection.

Mr. Rosenblum: He didn't say no and he didn't say yes.

The Court: You ask him without incorporating any facts of what he recalls.

Mr. Rosenblum: All right.

Q. Will you tell us when you answered, "I don't remember", whether by that you say your answer is "No" or your answer is "Yes", or you have no recollection, either way?

Mr. Hallinan: I think this is an effort, your Honor, to play around with what "I don't remember" means.

The Court: I think the trouble is that a question which you didn't object to had several questions in one and, therefore, we can't tell exactly what his answer does mean, and I think the thing to do is, if you want to pursue that any further, you break up the question into——

Mr. Rosenblum: I will break it up.

Q. Do you recall whether or not, after you were in jail, you communicated with Mr. Frank Hogan's office, the District Attorney's office, in connection with the Jelke investigation and the trial which later followed? (436) A. I don't remember that at all.

Q. Would you say you didn't? A. I just don't remember.

Q. Do you recall whether you were brought down there, that is, to the District Attorney's office? A. When?

Q. At any time after you went to jail, in connection with the Jelke investigation? A. I just don't remember.

Q. Would you say that you weren't? A. I just don't remember.

Q. Were you questioned about it at the District Attorney's office? A. I just don't remember.

Q. Would you say you weren't questioned? A. I don't remember.

Q. Did you state to the District Attorney's office that you would cooperate with them in return for a recom-

mendation for an early parole? A. I just don't remember that incident at all.

Q. Did they tell you that you just weren't telling the truth and they wouldn't use you? A. I just don't remember.

(436a) Mr. Hallinan: I object to this, your Honor.

The Court: I think that is improper, and I will strike it out, and I will remind the jury again that the incorporation of facts in a question doesn't constitute any proof whatever before you; the only testimony is from the answers of the witness.

(437) Q. Can you tell us whether or not after——

Mr. Rosenblum: I except, your Honor.

Q. Will you tell us whether or not after you went to jail you represented to a Secret Service agent by the name of Motto that you had some knowledge of a certain theft of blank unissued Government bonds from a bank?

The Witness: Will you read that question again? (Question read.)

A. I don't remember that incident.

Q. What is that? A. I just don't remember that incident. I remember speaking to Motto, but I just don't remember that incident.

Q. Would you say it did not occur? A. I don't say it did and I don't say it didn't.

Q. That is your best answer—you don't remember? A. I just don't remember.

Colloquy of Counsel

Mr. Rosenblum: I may be finished. I would like a minute. May we have our recess now, your Honor?

The Court: All right. We will take a ten-minute recess.

(438) (Short recess.)

(Jury in box.)

Mr. Rosenblum: I now respectfully ask your Honor that the statements that this witness has testified about be produced by the Government for your Honor so your Honor may examine them under the *Krulewich* case to see whether or not there is something in them which would entitle me to use them for cross-examination.

Mr. Hallinan: I would be very happy to. In that connection, I would inform your Honor that we have no state statements. The master statement I have in my office, and I would be happy to make that available to your Honor.

Mr. Rosenblum: Are there any statements other than that one?

Mr. Hallinan: I think my statement was clear. We have in our office one statement which has been referred to here as the master statement. Any other statements from the beginning of time until now I know nothing about, I know not where they are.

Mr. Rosenblum: Might I request that the statements in the possession of the FBI be produced for the same purpose, so that your Honor may see them (439) and see whether I am entitled to use them in further cross-examination?

The Court: All right. I will ask you to produce any previous statements in your possession or in the possession of the prosecution generally and Mr. Malinky's possession in the absence of some

contravening claim of privilege as far as the prosecution is concerned, and I will look them over.

Mr. Rosenblum: May it also include Secret Service?

Mr. Hallinan: I do not have those in my possession.

Mr. Rosenblum: The Government can get them, obviously.

The Court: I will look at the ones that you have in your possession and if, on the basis of that, I conclude I want you to look for any more, I will let you know.

Mr. Rosenblum: Then you will keep open for the moment whether or not any statements, if there were statements made to the Secret Service, which is part of the same Government——

The Court: I tell you, I am not at this point going to start ransacking all the Government files in (440) the various departments looking for any stray notes. I will look at the statements that Mr. Hallinan can get or Mr. Malinky can get for me, and then on the basis of that, if I conclude we should do any more ransacking, we will do it. Otherwise we won't.

Mr. Rosenblum: I have no further questions.

The Court: Have you anything further?

Mr. Hallinan: No, no further questions.

(Witness excused.)

SIDNEY HACK, called as a witness on behalf of the Government, being duly sworn, testified as follows:

Direct examination by Mr. Hallinan:

Q. Mr. Hack, what is your business? A. I am an importer of musical instruments.

Q. Do you know a man by the name of Irving Mishel? A. Yes, I do.

Q. Did there come a time when Irving Mishel asked you to sign——

> Mr. Rosenblum: If your Honor pleases, I think it is leading as far as it is going, and I (441) think on direct examination the question should be put to get testimony from the witness.
>
> Mr. Hallinan: If Mr. Rosenblum can suggest the question or a shorter way, all right.
>
> Mr. Rosenblum: He is going to say what occurred. The vice is done once you put a leading question, something you should not put in. It is obvious. That is what I tried to stop with the other witness, and I am trying to stop it now.

By the Court:

Q. How long do you know Mr. Mishel? A. About ten years.

Q. Did you ever have any business transactions with him? A. Yes, I have had some.

Q. Did any of them relate to the Pennsylvania Exchange Bank? A. Yes.

Q. Will you tell us what those transactions were?

> Mr. Hallinan: May I approach the bench, your Honor, please?
>
> The Court: All right.

Colloquy of Counsel

(The following took place at the bench, out of the hearing of the jury.)

(442) Mr. Hallinan: I am not putting on this witness for very many reasons, and I do want to limit my interrogation. The only specific purpose for putting this witness on is that he did sign these two signature cards Thomas Young and John Case at the request of Mishel; secondly, that he never made any personal use of these two accounts. That is about the sum and substance of it.

The Court: Very well. I will sustain your objection to my question, and I will let you direct his attention to those particular cards.

Mr. Rosenblum: Not give the details as to how something was done. I would like to hear it from the witness.

Mr. Hallinan: You can make him your own witness.

The Court: I will let him lead on that because of the danger of opening up general subjects, which I should have thought of myself, that he does not want to go into.

Very well.

Mr. Rosenblum: I do not want to say I agree because I cross-examine him I am making him my own witness. The witness is a hostile witness.

(443) The Court: We will not hold your silence against you.

(Proceedings were resumed within the hearing of the jury as follows.)

The Court: I am sustaing an objection to my own question, and we will now go on with Mr. Hallinan's next question.

By Mr. Hallinan:

Q. Did there come a time, Mr. Hack, when you signed two signature cards, bank signature cards, for Mr. Mishel at his request? A. Yes.

Q. Do you recall——

Mr. Rosenblum: I do not think it has to be that leading.

The Court: Don't you have the exhibits?

Mr. Hallinan: Yes.

The Court: You can show him that and ask him how it came about.

Mr. Hallinan: I want to get a general time fixed first.

Q. Do you recall when that was? A. It was about the beginning of 1949.

Q. I show you Government's Exhibits 10— (444) first of all, do you recall what names you signed on the signature cards? A. Yes. John Case and Thomas Young.

Q. I show you Government's Exhibits 10 and 11 in evidence and ask you what they are? A. Well, these were the signature cards which I signed.

Q. The ones you have just referred to? A. Yes.

Q. And on Government's Exhibit 10, to make it more specific, did you sign the name in handwriting "Thomas Young" on that exhibit? A. Yes.

Q. And likewise with Government's Exhibit 11, did you sign the name "John Case" on that? A. Yes, I did.

Q. What did you do with these cards after you had signed them? A. Then Mr. Mishel took them from me.

Q. What condition were they in when you gave them to Mr. Mishel? A. They just had the signature on them, nothing else.

Q. Did you sign checks in connection with these (445) two accounts? A. Yes, I did.

Q. Were those checks signed in blank? A. That I don't remember.

Q. Did you make any personal use of these two accounts? A. No.

Q. Did you ever identify anyone at the Pennsylvania Exchange Bank in connection with the cashing of United States Savings Bonds? A. No.

Mr. Hallinan: You may inquire.

Cross examination by Mr. Rosenblum:

Q. Were these signed in the Pennsylvania Exchange Bank? A. No. They were signed at Mr. Mishel's office.

Q. At Mr. Mishel's office? A. Yes.

Q. And who was present at that time? A. Oh, I don't remember.

Q. But it was at Mr. Mishel's office? A. Yes, it was at Mr. Mishel's office.

Mr. Rosenblum: No further questions.

(Witness excused.)

(446) Mr. Hallinan: Mr. John Brennan, please.

JOHN J. BRENNAN, called as a witness on behalf of the Government, being duly sworn, testified as follows:

Direct examination by Mr. Hallinan:

Q. Mr. Brennan, where are you employed? A. The Pennsylvania Exchange Bank.

Q. In what capacity? A. At this time?

Q. Yes. A. Cashier.

Q. Is that an officer at the bank? A. It is.

Q. How long have you been employed at the Pennsylvania Exchange Bank? A. Nine years.

Q. Now, are you familiar with the duties of guards in the Pennsylvania Exchange Bank as they existed in 1949 and 1950? A. Yes, sir.

Q. Keep your voice up, please. A. Yes.

Q. Will you tell the Court and jury what those (447) duties were? A. A guard is employed to, firstly, guard the bank's premises, secondly, assist customers of the bank or non-customers of the bank who would make inquiries of them, furnish information to them, help them fill out deposit slips, withdrawal slips, things of that nature. He also is a vault attendant, acts in that capacity on a part-time basis as called for, and as a messenger within the office to carry messages from an employee to another employee or to an officer or from an officer to an employee, jobs of that nature.

Mr. Hallinan: You may inquire.
Mr. Perry: May I, your Honor?
The Court: Yes, certainly.

Cross examination by Mr. Perry:

Q. Mr. Brennan, you say you are the cashier of the bank; is that right? A. Yes, sir.

Q. What you mean is that you are an employee of the bank? A. That's true.

Q. As Mr. Kennedy when he was alive was an employee of the bank; is that correct? (448) A. True.

Q. And Mr. Miller, when he was the president of the bank, was an employee there as well? A. Yes, sir, he was.

Q. And all of you—you, Mr. Miller, Mr. Kennedy, other officers of the bank—are employees of the bank? A. True.

Q. And when you spoke now of the duties that the guard has, you mean the duties of his employment as an employee of the bank; is that right? A. Yes, sir.

Q. There is no question of any special duties with relationship to Mr. Miller as president of the bank? A. No, sir.

Q. And no question of any special duties with relationship to you as cashier of the bank? A. No, sir.

Q. All of you are employees? A. Yes, sir.

Q. And the duties that you spoke of for the guard and the duties that you have as cashier and the duties that the president has are all duties that each (449) of you owe to your employer, and your employer is the bank? A. Yes.

Mr. Perry: No other questions.

The Court: Anything else, Mr. Hallinan?

Re-direct examination by Mr. Hallinan:

Q. Was the guard or any guard during that period of time subject to the directions of the president of the bank? A. Any guard or any other employee, yes, would be subject to the directions of the president.

Mr. Hallinan: That is all.

The Court: All right, thank you.

(Witness excused.)

Mr. Hallinan: Virginia Graef.

VIRGINIA GRAEF, called as a witness on behalf of the Government, being duly sworn, testified as follows:

Direct examination by Mr. Halliñan:

Q. Miss Graef, you are going to have to keep your voice up so that everyone in the courtroom can hear you. Where are you presently employed? (450) A. The Irving Trust Company.

Q. In what capacity? A. I open special checking accounts and savings accounts.

Q. And how long have you been employed by the Irving Trust Company? A. About six years.

Q. Where were you employed prior to that time? A. The Pennsylvania Exchange Bank.

Q. And for what period of time were you employed at the Pennsylvania Exchange Bank? A. September of 1947 to February of 1950.

Q. What was your job at the Pennsylvania Exchange Bank? A. I was the special checking teller.

Q. Did you have any other duties? A. Yes. Do you want me to tell what my duties were?

Q. Yes. A. I would take in deposits, cash checks, cash bonds, enter them in the bond register and post on the special checking ledger.

Q. Were you at that time the regular teller handling the cashing of United States Savings Bonds? (451) A. Yes.

Q. Now, while you were employed there during the period of time you have told us about who was president of that bank? A. James Miller.

Q. Do you see Mr. Miller here in this courtroom? A. Yes, right over there (indicating).

Mr. Hallinan: May the record indicate the witness has identified the defendant?

The Court: Yes.

Virginia Graef—for Government—Direct

Q. Now, while you were employed at the bank, was there a procedure to be followed with respect to the cashing of these United States Savings Bonds where the person had no account at the bank and was not known at the bank? A. Yes, there was.

Q. Will you tell the Court and jury, please, what that procedure was? A. I would ask the person to go over to see one of the officers of the bank to have the bonds approved, because I had no authority to cash bonds if the person was not known to me. The officer would initial the bonds, the person would come back to my window, I would get out a bond chart to see (452) what amount had to be paid out, I would place the stamp on the face of the bond. The stamp consisted of the name of the bank, the date, the amount paid out and a place where I would sign my name. I would then have the person fill out a bond redemption form. The redemption form consisted of the date, the name of the bank and the amount paid out. This was used at the end of the day to help me prove up my cash and later became a permanent bank record.

Q. Now, if you can, would you turn around and look at that chart, that diagram that is right behind you. A. Yes.

Q. I will give you a pencil and ask you to mark on that exhibit the initials "V. G.", your own initials, near or at the cage, as I will refer to it, that you occupied when you were working at that bank. A. I have marked it (writing).

Q. Now would you mark with a square the spot on that diagram with respect to your cage where the defendant Miller had a desk? A. (Witness writes.)

Q. Would you write "Miller" in that, please? A. (Witness writes.)

(453) Q. Now, from where your cage was, indicating "V. G." on Government's Exhibit 12, could you see Mr. Miller's desk? A. Yes.

Q. If you recall, do you recall approximately how high your cage was? A. Well, I would say it was about up to here (indicating). That is approximate.

Q. And what was above the top of that? A. There was nothing above the top of that.

Q. Are you familiar with a person by the name of Irving Mishel? A. Yes, I am.

Q. How are you familiar with him? A. From coming into the bank.

Q. Do you recall during the period December 29, 1949, to February 20 or sometime in early 1950 cashing bonds registered in the name of Chernoff? A. Yes, I do.

Q. Do you recall on approximately how many occasions you cashed bonds registered in that name? A. Five times.

Q. Once again I will have to ask you to keep your voice up.

(454) Will you tell the Court and jury, please, everything that you recall about the cashing of those bonds? A. Mr. Kennedy, the bank guard, brought bonds over for me to cash. I asked him where they came from and why they hadn't been initialed. They were in the name of Nat or Blanche——

> Mr. Rosenblum: I object to any conversation between this lady and Mr. Kennedy if it was not in the presence of the defendant.
>
> The Court: I will take it. I will overrule the objection.
>
> Mr. Rosenblum: Exception. May I point out two things? First, it violates the hearsay rule; secondly, Mr. Kennedy is dead.
>
> The Court: I realize both things except I do not concede it violates the hearsay rule, although it is hearsay.

A. I asked Mr. Kennedy why the bonds hadn't been approved and where they came from.

Mr. Rosenblum: I cannot hear the witness.

Q. You will have to speak much more loudly. A. He said it was all right to cash them, they were from Mr. Miller. I looked over at Mr. (455) Miller's desk and saw Irving Mishel seated there talking to Mr. Miller. I cashed the bonds, gave Mr. Kennedy the money, watched him take it over and place it on Mr. Miller's desk. Irving Mishel was still seated there talking to Mr. Miller. That's as much as I saw.

Q. Was anyone else besides Mr. Miller and Mr. Mishel at Mr. Miller's desk at the two times you referred to? A. No.

Q. I show you Government's Exhibit 1 in evidence, Miss Graef, and ask you if you cashed this bond at the Pennsylvania Exchange Bank (handing to Witness)? A. Yes, I did.

Q. I ask you when you cashed that bond? A. December 29, 1949.

Q. And will you tell the Court and Jury, please, what notations you placed upon that bond? A. Well I have the amount written in ink, and I have written my name on here.

Q. Did you place any stamps on the bond? A. Oh, yes, the stamp was placed on here also.

The Court: Excuse me. When you say the amount, you mean the amount you paid out?

(456) The Witness: The amount I paid out, yes.

Q. What stamps did you put on it? A. I put a stamp on showing the amount paid out, the name of the bank, the date and the place where I signed my name.

Q. I show you Government's Exhibit 2 in evidence—first of all, with respect to Government's Exhibit 1, in whose name is that registered? A. Nat Chernoff or Blanche Chernoff.

Q. I show you Government's Exhibit 2 in evidence and

I ask you if you cashed the bonds in that exhibit at the Pennsylvania Exchange Bank? A. Yes. These are eight bonds cashed by me January 9, 1950.

Q. And I ask you with respect to that exhibit what notations you placed upon that bond? A. The bank stamp appears on here with the amount paid on each bond, the date and the name of the bank and my name signed.

Q. I show you Government's Exhibit 4 in evidence and I ask you if you cashed those bonds at the Pennsylvania Exchange Bank? A. Yes. These are seven bonds cashed by me. The bank stamp appears on here with the name of the (457) bank, the amount paid out——

Mr. Rosenblum: Would you mind keeping your voice up? It is very hard to hear you.

A. The bank stamp appears on here with the amount paid out, my name, the name of the bank also.

The Court: I did not get the date on that.

The Witness: I am sorry. The date of this is January 30, 1950.

Q. I show you Government's Exhibit 5 in evidence and ask you if you cashed these bonds at the Pennsylvania Exchange Bank? A. Yes, these are eight bonds cashed by me February 6, 1950. The name of the bank appears on here, the amount paid and my name written on.

Q. Now I show you Government's Exhibit 6 in evidence and I ask you if you cashed these bonds at the Pennsylvania Exchange Bank? A. These are 11 bonds cashed by me February 9, 1950. The bank stamp appears on it, the amount paid out and my name written on it.

Mr. Rosenblum: Keep your voice up, Miss Graef. We cannot hear you.

Virginia Graef—for Government—Direct

Q. Miss Graef, Government's Exhibits 1, 2, 4, (458) 5 and 6, which you have just looked at and identified, were any of these bonds signed in your presence? A. No.

Q. Were any of the bonds in those same exhibits presented to you by anyone claiming to be Nat Chernoff? A. No.

Q. Was anyone at any time introduced by anyone named Nat Chernoff or introduced to you as Nat Chernoff while you were at the Pennsylvania Exchange Bank? A. No.

Q. Miss Graef, I show you Government's Exhibit 1-A in evidence, which is a bond redemption form, and I ask you if this is the redemption form which accompanied the bonds on December 29, 1949? A. Yes, it is.

Q. What notations did you make on Government's Exhibit 1-A in evidence? A. I have the amount written on here, and I have the bank stamp placed and the date.

Q. I show you Government's Exhibit 2-A in evidence and I ask you the same questions with respect to that? A. The date January 9, 1950, the amount, and I have "Miller" written in here in my handwriting.

(459) Mr. Rosenblum: Would you please keep your voice up. I will ask that the answer be read, please. I just cannot hear it.

The Court: Read the last answer.

(Last answer read.)

Q. Now I show you Government's Exhibit 4-A in evidence and I ask you if this accompanied the bonds which you cashed on January 30, 1950? A. Yes.

Q. What notations did you make on that exhibit? A. I have the amount written here, the date and the bank stamp.

Q. I show you Government's Exhibit 5-A in evidence and ask you if this is the bond redemption form which accompanied the bonds which you cashed on February 6, 1950? A. I have the amount paid out written here and the date——

Q. I am sorry. Is that the— A. I am sorry. Yes, it is.

Q. What notations did you make on that? A. The amount paid out, the date and the bank stamp.

Q. I show you Government's Exhibit 6-A and (460) ask you if that is the bond redemption form which accompanied the bonds which you cashed on February 9, 1950? A. Yes. I have the date and the amount paid out here.

Q. Now I show you Government's Exhibit 3-A, which is the redemption form which accompanied bonds on January 19, 1950. I ask you if any of the notations on that redemption form are in your handwriting? A. Yes, the amount paid out is in my handwriting.

Q. Now I show you once again Government's Exhibit 2-A in evidence, which is the redemption form which accompanied the bonds you cashed on January 9, 1950, and I ask you—I think you have already testified to it—did you write in your own handwriting the name "Miller" on the face of that redemption form? A. Yes, I did.

Q. Why did you write the name "Miller" on that redemption form? A. Because he was the officer who had something to do with the cashing of the Chernoff bonds.

(461) Q. Now I ask you with respect to these redemption forms which you have just looked at and pointed out various things on, 1-A, 2-A, 4-A, 5-A, and 6-A, were any of these bond redemption forms signed in your presence? A. No, they were not.

Q. Were these bond redemption forms presented to you by anyone claiming to be Nat Chernoff? A. No, they were not.

Q. Do you know anyone by the name of Thomas Young? A. No, I do not.

Q. Was anyone ever presented to you at the bank by the name of Thomas Young by anyone? A. No.

Q. I show you once again Government's Exhibits 5-A and 6-A in evidence, and ask you if the name Thomas Young appearing on both of those were signed in your presence? A. No, it was not.

Q. Did Irving Mishel ever introduce anyone to you as Nat Chernoff? A. No, he did not.

Q. As a matter of fact, did you ever speak to (462) Irving Mishel at the bank? A. No, I did not.

Q. Miss Graef, what form did the redemption forms come in while you were at the bank? A. They came in padded form.

Q. And where were those pads kept? A. In my cage.

Q. You were the bond teller. They were kept at the bond teller's cage, your cage? A. That's right.

Q. Did you ever give a padful of these redemption forms to Irving Mishel? A. No, I did not.

Q. Did you ever give a padful of redemption forms to anyone while you worked at the bank? A. No.

Q. And by that I mean in blank? A. No, I didn't.

Mr. Hallinan: May we have this marked 13, please.

(Marked Government's Exhibit 13 for identification.)

Mr. Hallinan: 14.

(Marked Government's Exhibit 14 for identification.)

(463) Mr. Hallinan: 15.

(Marked Government's Exhibit 15 for identification.)

Mr. Hallinan: 16.

(Marked Government's Exhibit 16 for identification.)

Mr. Hallinan: 17.

(Marked Government's Exhibit 17 for identification.)

Mr. Hallinan: 18.

(Marked Government's Exhibit 18 for identification.)

By Mr. Hallinan:

Q. Miss Graef, I show you Government's Exhibit 13 for identification and I ask you what it is? A. It is a bond register sheet on which I entered the Chernoff bond cashed by me December 29, 1949.

Q. Is that from the Pennsylvania Exchange Bank? A. Yes.

Q. Is that record kept in the regular course of business at the bank? A. Yes, it is.

Q. And is it the regular course of the business (464) of the bank to keep that record? A. Yes.

Q. I show you Government's Exhibit 14 for identification and ask you what it is (handing to witness)? A. Bond register sheet on which I showed the cashing of the Chernoff bond on January 9, 1950.

Q. Is that maintained by the Pennsylvania Exchange Bank? A. Yes.

Q. Is it kept in the regular course of business? A. Yes.

Q. And is it the regular course of business of the bank to keep that record? A. Yes.

Q. I show you Government's Exhibit 15 for identification and ask you what it is? A. It is the bond register sheet on which I entered the cashing of the Chernoff bonds on January 19, 1950.

(465) Q. And is this a bank record kept in the regular course of business? A. Yes, it is.

Q. And is it the regular course of business of the bank to keep this record? A. Yes, it is.

Q. I show you Government's Exhibit 16 for identification and ask you what it is. A. The bond register sheet on which I have entered the Chernoff bonds cashed on January 30, 1950.

Q. Is this a document of the Pennsylvania Exchange Bank? A. Yes, it is.

Q. And is it kept in the regular course of business? A. Yes, it is.

Q. And is it the regular course of business for the bank to keep that record? A. Yes.

Q. I show you Government's Exhibit 17 for identification and ask you what it is. A. Bond register sheet on which I have entered the Chernoff bonds cashed on February 6, 1950.

Q. And is this a bank record also? (466) A. Yes, it is.

Q. Kept in the regular course of business? A. Yes.

Q. And is it the regular course of business to keep this record? A. Yes, it is.

Q. I show you Government's Exhibit 18 for identification and ask you what it is. A. This is also the bond register sheet——

Mr. Rosenblum: A little louder, please.

A. This is a bond register sheet but I don't see in my handwriting on here.

Q. Are there entries reflecting— A. Yes, there are entries of the Chernoff bonds in here also. On February, 1950—no, that is the date of it.

Mr. Rosenblum: I cannot hear the witness, your Honor.

The Court: Read the answer as far as it has gone.

The Witness: I am looking for something.

A. Well, there are Chernoff bonds on here on February 15, 1950. It is not in my handwriting. And on February 20, 1950.

(467) Q. Do you recognize this as a document of the Pennsylvania Exchange Bank? A. Yes, I do.

Q. And is this kept in the regular course of business? A. Yes, it is.

Q. And is it the regular course of business for the bank to keep that record? A. Yes, it is.

Mr. Hallinan: The Government offers Government's Exhibits 13 through 18 (handing to Mr. Rosenblum).

The Court: Is there anything else from this witness?

Mr. Hallinan: Just a few questions, your Honor.

The Court: Do you need these records you have just offered? Do you need these records for the questions?

Mr. Hallinan: No, but if they are going to be occupied they will not be able to pay attention.

The Court: Are you going to hold us up?

Mr. Rosenblum: No. I will be waiting for the minutes anyway so I can know what the lady said.

By Mr. Hallinan:

Q. While you were at the bank, did Mr. Miller, (468) as president of the bank, have access to the bond redemption forms in their blank form? A. Yes, he did.

Q. Did he have access to the bond redemption forms once they became a permanent record of the bank? A. Yes.

Q. Did he also, as president, have access to the bond register? A. Yes, he did.

Q. Did he also, as president, have access to the bonds with all their notations on them before they were sent to the Federal Reserve Bank for collection? A. Yes, he did.

Q. Now, did you ever discuss from the date of the cashing of any Chernoff bonds that you cashed, while

you were at the bank or any time thereafter, the cashing of those Chernoff bonds with Mr. Miller? A. No, I did not.

Q. Specifically I ask you, did Mr. Miller ever request from you to see the particular redemption forms which you have identified? A. No, he did not.

Q. Did he ver request to see from you the bond registers? (469) A. No, he did not.

Q. Did anyone at the bank question you regarding the cashing of these bonds? A. No, they did not.

Q. Did anyone from the law firm of Dorf & Levy ever examine you with respect to the cashing of these Chernoff bonds? A. No, they did not.

Q. In that I include Mr. Dorf. Did he examine you? A. No, he did not.

Q. Did Mr. Levy examine you? A. No.

Q. Did a man by the name of Mr. Weiss examine you? A. No.

Mr. Hallinan: You may inquire.

The defendant has no objection to the documents.

The Court: Received.

(Government's Exhibits 13 to 18, inclusive, for identification received in evidence.)

Cross-examination by Mr. Rosenblum:

Q. Miss Graef, will you tell us, please, how long after the last date or for how long a time after the last date of the cashing of the Chernoff bonds did (470) you leave the bank? A. The bond was cashed February '50 and I left in February '50.

Q. That is— A. I can't give you a specific date. I can give you the month. That is all I can do.

Q. That is the approximate time? A. Yes.

Q. It would be shortly after the last of the Chernoff

bonds was cashed that you left; is that right? A. Yes, that's right.

Q. In particular, let us say during the month of July, 1950, you definitely were not at the bank? A. That's right, yes.

Q. So that unless you were contacted at another place for examination, you would not know whether there was or was not any investigation at the bank? A. I was contacted.

Q. In 1950? A. I believe it was that summer, yes, that the FBI men came to the house.

Q. And about when was that? A. It was during the summer, I believe.

(471) Q. During the summer of 1950? A. Yes.

Q. Is that right? A. I think so.

Q. And was that the time when a man by the name of Sershen came down to see you? A. That is correct, yes.

Q. Was he alone or was he with another agent? A. He was alone.

Q. Between the end of February and that date in July that I brought to your attention, you were not at the bank, is that correct? A. That is correct, yes.

Q. Now, when you said before that the redemption forms were available to Mr. Miller—do you remember that? A. Yes.

Q. Were they available to you? A. Yes.

Q. Were they available to the other tellers? A. By coming to my window, yes.

Q. Were they available to the vice-president of the bank? A. Yes, they would be available.

Q. What was his name? (472) A. I can't think of his name.

Q. Well, whatever the name was, the redemption forms were available to the vice-president, is that so? A. Yes.

Q. Were they available to the cashier? A. Yes, they would be.

Q. Do you recall what his name was? A. The cashier, it may have been Mr. Brennan at that time or it may have been Mr. Littlefield.

Q. Mr. Littlefield? A. Or Mr. Brennan.

Q. Did you know Mr. Littlefield? A. Yes, he worked at the bank.

Q. At that time was he an officer? A. I believe he left about that time. I believe he left before then.

Q. I can't hear you. A. I believe he left before then. He was cashier at one time.

Q. And the cashier is an officer? A. Yes.

Q. Isn't that right? A. That is right.

Q. Can you tell us what the name of the manager (473) was? A. Oh, well, perhaps Mr. Littlefield may have been the manager. I know Brennan was one of the officers, too, Mr. Brennan.

Q. Mr. Brennan was one of the officers? A. Yes, he was.

Q. Were these redemption forms available to Mr. Brennan as well as to Mr. Littlefield? A. Yes, they would have been.

Q. Now, who else were these forms available to? A. They would be available to the officers of the bank.

Q. Now, I think you identified——

Mr. Rosenblum: Will you give me the redemption forms, please?

(Mr. Hallinan hands to Mr. Rosenblum.)

Q. Taking them out of order, in the way they are now, is this your handwriting? A. That is my handwriting.

Q. That is on 3-A for identification? A. Yes.

Q. How about 7-A?

Mr. Hallinan: Just a minute, please. Your Honor, I am going to object.

(474) A. No, that isn't my handwriting.

Mr. Hallinan: No. I am going to object now, and I haven't thus far, but we are reaching the territory where I am. I did not examine her as to 7-A. If Mr. Rosenblum wants to examine her as to any other matters——

Mr. Rosenblum: Frankly, I——

Mr. Hallinan: I am not finished, Mr. Rosenblum.

Mr. Rosenblum: I am sorry. Go ahead.

Mr. Hallinan: He may do so if he wants to elicit matter and your Honor will have to rule on it at that particular time. But I want him to do it as I think the Government is entitled to have it done, and that is at the proper time, which is not now, but when the Government has rested the case, your Honor.

Mr. Rosenblum: I don't know what Mr. Hallinan is referring to.

Mr. Hallinan: You have my memo and that has put you on complete notice as to exactly what I mean.

Mr. Rosenblum: This isn't sacred.

The Court: He objected to your going outside of the scope of the direct. In other words, he has not asked any questions on direct about 7. He says that if you want to ask on your own questions about 7, why, you should recall the witness as part of your case.

(475) Mr. Rosenblum: Frankly, I couldn't hear her. May we then adjourn at this time so that I can get her testimony and read it? I don't recall, I couldn't hear her answers.

The Court: All right.

Mr. Rosenblum: We are going to stop anyway.

The Court: We are going to stop at 4:30, unless you can finish with a few questions.

Mr. Rosenblum: No, I couldn't.

The Court: All right. Is there anything more to add now?

We will excuse the jury. Don't discuss the case among yourselves. 10.30 tomorrow morning.

(Jury retired, and the following proceedings took place in their absence.)

Mr. Hallinan: Would your Honor instruct these two witnesses that I have here?

The Court: Yes.

(Two prospective witnesses entered the courtroom.)

The Court: Gentlemen, I am going to have to ask you to come back tomorrow. I have every hope that you will be reached tomorrow, as far as we can see. In other words, we have had a long witness and there was no way of telling when he would end. Now things (476) should move along a lot faster.

The other thing, what it really comes down to is, if there is any real significance to the Government or to the defendant in having the examination conducted in that particular order, I think you are entitled to it. But, if it doesn't make much difference, why, I would try to clean up the witnesses testimony while they are here to avoid bringing them back, which is more for the convenience of the witness than anything else, but if one of the parties will be seriously put at a disadvantage that way, I believe the witnesses convenience would have to suffer.

Mr. Hallinan: Yes.

The Court: If we get to that point and it does make a difference, why, I think you are probably right. But I wouldn't do it unnecessarily.

Mr. Hallinan: No. I have found from past experience, your Honor, that it has to be done promptly and it has to be done at the first opportunity with

respect to any testimony, otherwise it is out the window, and you have the Government's case and the defendant's case going in as part of the Government's case, and the jury gets a picture that is this way and that way. (477) I think we are entitled to have our case clearly before the jury and then they can put theirs.

Mr. Rosenblum: I don't, really, frankly, understand why he is taking the position at this time in connection with 7-A. Maybe there is something I don't know.

The Court: He figures he has to take it sooner or later and he would just as soon take it at the first opportunity.

Mr. Rosenblum: 7-A?

The Court: He didn't ask about 7-A. He asked about five exhibits. 7-A wasn't one. If you want to question her about 7-A you can recall her as your witness after he has rested.

Mr. Rosenblum: I was going to take her through all of them. That is what I was going to do.

Mr. Hallinan: That is precisely what I wanted to avoid.

Mr. Rosenblum: I didn't get any significance, any intention she was going to make in connection with 7-A. I think he brought her attention to those that she identified, that she knew.

The Court: Unless you see some reason—his rule is the strict one, and unless you see some reason (478) for not following it, why, say so, because he believes, and I am not one, I not having been through his case, I am not the one to treat it lightly, and I realize that a case can have complexities, it can get scrambled if you throw too many things in at the same time. I will go along with him unless you, as you think it over——

William T. Heffelfinger—for Government—Direct

Mr. Rosenblum: I was going to get the identification, whose handwriting it was.

Mr. Hallinan: I am going to have other witnesses, and I didn't want to get it all——

Mr. Rosenblum: Is that the only objection?

Mr. Hallinan: No. I have the general standing objection from past experience—I would like to get my case before the jury in a clear picture.

The Court: All right. We will see how it works out.

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(479)

New York, October 23, 1956;
10.30 o'clock a. m.

Trial resumed.

WILLIAM T. HEFFELFINGER, called as a witness on behalf of the Government, being duly sworn, testified as follows:

Direct examination by Mr. Hallinan:

Q. Mr. Heffelfinger, by whom are you employed? A. United States Treasury Department.

Q. And what is your official position with the Treasury Department? A. Fiscal Assistant Secretary.

Q. How long have you been with the Treasury Department? A. 39 years.

Q. Now did there come a time, Mr. Heffelfinger, when the Treasury Department became interested in the cashing of certain savings bonds at the Pennsylvania Exchange Bank in New ~~York~~ City? A. Yes.

Q. Now do you have the file of the Treasury Department relating to that whatter with you? A. I do.

(483) Q. Can you tell the Court and jury, please, when the Treasury Department first communicated with the

bank? A. I think that was in 1950; we first notified the bank that there was a possibility that they were liable for erroneously paying certain bonds issued in the name of Chernoff.

Q. Can you give us the exact date? A. July 19, 1950.

Q. And how was the bank informed? Was that by letter? A. By letter, yes.

Q. And to whom was the letter addressed? A. It was addressed to Mr. J. W. Miller, President, Pennsylvania Exchange Bank, 566 Eighth Avenue, New York 18, New York.

Q. All right. Do you have in that file a letter dated December 26, 1951, from Mr. Miller to a Mr. Bartelt in the Treasury Department? A. I have.

Q. Could you detach that letter? Can you tell us, first of all, when that letter was received? A. The letter is dated December 26, 1951. From the stamp, mail time stamp on the back of the (484) letter, it was received in the office of the Fiscal Assistant Secretary of the Treasury Department on December 27, 5.14 p. m.

Q. What city was it received in? A. In Washington, D. C.

Q. Are there any other stamps on the back indicating it went to other places? A. After receipt in the office of the Fiscal Assistant Secretary it is then sent in the Treasury to the Commissioner of the Public Debt, who has supervision over this activity. It goes from that office in Washington to their office in Chicago, where all the savings bonds work is performed.

It shows here that it was received in Chicago in the office of the Deputy Commissioner in charge in the Chicago office on January 2, 1952, at 11.56 a. m.

And from his office it shows it went then to the Operating Division, Division of Loans and Currency, the Chicago branch of that division, and was received there on January

3, 1952, at 11.30 a. m. That is the division that was responsible for developing the case.

Q. Now do you have in that file a letter dated April 4, 1952, from Mr. Miller to Mr. Peyton of the (485) Treasury Department? A. Yes, I do.

Q. Can you tell us where and when that letter was received by the Treasury Department? A. This letter is dated April 4, 1952. It is addressed to Treasury Department, Fiscal Service, Chicago 54, Illinois, attention Mr. Charles D. Peyton, Deputy Commissioner in charge. It is shown by the time stamp on the reverse copy of the letter that it was received in Chicago in the Division of Loans and Currency or in the Deputy Commissioner's office, that is Mr. Peyton, on April 9, 1952, at 3.59 p. m.

From there it was sent to the Division of Loans and Currency and received there on April 11 at 8.50 a. m. It was also sent, before receiving it in the division it went to their mail room on April 10, 1952, 11.34 a. m.

Q. Do you have in your file a letter dated June 4, 1952, from Dorf & Levy to Mr. Bartelt of the Treasury Department? A. Yes. This is a letter dated June 4, 1952 from Dorf & Levy addressed to Mr. E. F. Bartelt, my predecessor and Fiscal Assistant Secretary of the Treasury. It was received in our office, it has (486) a date stamp here of June 9, 1952, and 9.33 a. m.

Mr. Hallinan: If your Honor please, I shall now make available to Mr. Rosenblum the letters that have just been referred to, the photostatic copies. If he is agreeable I would rather not have those marked so that Mr. Heffelfinger may take them back to Washington with the file. I will let him compare these photostatic copies we have with them.

May we have this marked 22?

(Marked Government's Exhibit 22 for identification.)

Mr. Hallinan: They are just a little out of order, your Honor, because this witness comes out of order.

(Government's Exhibits 23 and 24 marked for identification.)

(487) Q. Mr. Heffelfinger, in connection with the Treasury Department's investigation, did you have occasion to make personal contact with Mr. Miller here in the City of New York? A. Yes, I did.

Q. First of all, do you know if anyone other than yourself from Washington made personal contact with Mr. Miller here in New York? A. No one in the Fiscal Service of the Treasury, to my knowledge.

Q. Can you tell us when that was? A. That was on April 14, 1952.

Q. How did you contact Mr. Miller originally on that date. A. Well, I had come to New York on a number of matters, and being up here I brought this file along with me to talk to Mr. Miller about the case because the bank had denied liability to the Treasury. As we call it, they had refused to reimburse the Treasury for the amount of these bonds which they had erroneously paid. Since I was in New York, I thought in a personal conversation with Mr. Miller we could present our side of the story.

Mr. Rosenblum: A little louder.

(488) A. (Continuing) We could present our side of the story to Mr. Miller and show him we were in all fairness taking into account everything we could take into account that supported the bank's position.

So from the hotel early that morning I called the bank

and asked to talk to Mr. Miller. I talked with him and told him I was in New York and would like to come over and discuss this case with him. He said, "Come right over."

I took a taxicab and I assume I was there within ten minutes, I believe.

Q. And did you see Mr. Miller at the bank? A. I was introduced to Mr. Miller at the bank, yes.

Q. And did you have a conversation with him? A. Yes.

Q. Will you tell the Court and jury, please, everything that was said by you and by Mr. Miller during the course of that conversation? A. I told Mr. Miller we were concerned with the denial by his bank of liability for these erroneously paid bonds, that we had no basis under our law and regulations to relieve the bank.

I pointed out that the law which the bank acted (489) under makes the bank liable for the payment unless the Secretary of the Treasury can find a basis for holding that the bank was not negligent in making the payment, that we could not find such a basis that the bank was not negligent, and that our only recourse was to ask for reimbursement from the bank.

I pointed out that we could obtain reimbursement in a number of ways. We could withhold an amount equivalent to this amount due from the bank from subsequent payments due to the bank from the Treasury, the set-off procedure; we could sue the bank; we could revoke the bank's authority to act as a paying agent or issuing agent for savings bonds; we could withdraw a substantial Treasury balance which we then had in the bank, some $3,000,000, on the theory that if a bank failed to carry out its obligations under one regulation we could have no assurance that the bank would carry out his obligations under these other regulations they were operating under as issuing or paying agents or as depositary.

I told him we were reluctant to do that, it was not our

policy to take punitive action against banks, it was our policy to settle with fairness to the banks and the Treasury. We could not operate the Treasury, I pointed out, without the cooperation of the banks.

Mr. Miller said he thought it was a very (490) harsh attitude of the Treasury, that he felt that his bank had paid the bonds properly.

He said they had paid them to a person who had been introduced to them as Chernoff, the owner of the bonds, and on that basis and in the light of the very small fee that the bank was getting for this service to the Treasury, he didn't think that the bank should be held liable.

He also said that he had taken the matter up with the bonding company and had sent the Treasury a letter but that letter was addressed to our Chicago office and had crossed between the time he sent it and the time I came to New York, so I didn't have the benefit of that letter in the file at the time.

I think Mr. Miller also said that he had an appointment to see his bonding company in the next few days, that he was going to discuss the matter further and at that time see that we got a check in reimbursement of the amount due the Treasury.

I asked him if he would expedite that because we like to make these cases as current as we can, and then I left him.

Q. Is that all of your recollection on this conversation? (491) A. That is the recollection which I refreshed my mind by memorandum I made at the time, which is in this file here.

Q. Do you recall anything in that conversation about Mr. Miller stating that secret service agents had informed him that the bonds were properly cashed? A. That is true, he did make that statement. I pointed out to Mr. Miller that I was confident the secret service agents had made no statement, it was contrary to their rules, that I

was sure that they would never make a statement to that effect because it was not their policy of business to make that determination, it was the business of the Secretary's office, of which we were his agent, and that the secret service agents are employed solely to develop the facts in the case and they had no authority and I was sure they had made no attempt to tell a bank whether they were liable or not liable for payment.

Mr. Hallinan: You may inquire.

The Court: Just a second, Mr. Hallinan. Have you got those exhibits identified by this witness so we know which is which?

Mr. Hallinan: Yes.

The Court: I frankly do not. Has he (492) said that those particular documents you have in your hand are photostats of the letters in his file?

Mr. Hallinan: No. I will have him compare them. Mr. Rosenblum has compared them.

The Court: I see. Will you tell me, then, what they are?

Mr. Hallinan: 22 is the letter addressed to Mr. E. F. Bartelt, Fiscal Assistant Secretary, Treasury Department, Fiscal Service, Washington, D. C., from James W.——

The Court: Just give me the date.

Mr. Hallinan: December 26, 1951.

Do you want just the date on the remaining two?

The Court: Yes.

Mr. Hallinan: Exhibit 23 is the letter of April 4, 1952, and Exhibit 24 is the letter dated June 4, 1952.

The Court: All right. The other one you referred to has not been identified. You referred to a letter of July 19, 1950.

Mr. Hallinan: No.

William T. Heffelfinger—for Government—Cross

Cross-examination by Mr. Rosenblum:

Q. Mr. Heffelfinger, you say that you said to Mr. Miller that a Treasury agent had no authority to (493) make a statement to the effect that in his opinion the bank was not liable. A. That's right.

Q. The Treasury Agent was making an investigation, was he not, to determine those facts which would establish two things, if possible: Who was responsible for the passing of bonds which were illegal in the sense that they had been forged, and the other was the question as to whether or not the bank acted negligently? A. No. The secret service agent——

Q. I mean the secret service agent. A. He does not make that determination. He makes an investigation of all the facts and circumstances surrounding the payment. He makes a report of that investigation, which comes to the Fiscal Service, an arm of the Secretary of the Treasury. That report is analyzed in our operations. We determine from those facts whether under our regulations the bank is to be held liable for the payment or is to be relieved of that liability.

Q. Do you want us to understand, Mr. Heffelfinger, that the secret service agent was not in a position to have an opinion on a matter that he was taking care of?

Mr. Hallinan: I will object to this. That is not what he said.

(494) The Court: I will sustain the objection as to form.

Q. You said, did you not, Mr. Heffelfinger, that the agent had no authority to say something? A. That he had no authority, and I was sure he would not have said it.

Q. How do you know? A. Because knowing from ex-

perience the way the secret service agents operate, I am sure——

Q. You cannot swear to the fact, can you, as to whether he did or did not say it? A. I can't swear to the fact, no.

Q. That is the fact, isn't it, that you cannot swear to it? A. I expressed my opinion at the time to Mr. Miller.

Q. That was your opinion, wasn't it? A. That's right.

Q. But you still cannot tell this jury whether or not the agent did or did not express an opinion? A. No.

Q. Isn't that the fact? A. That is true.

Q. But the facts upon which you say someone in your (495) department was to make a determination as to whether or not the bank was negligent, those facts were gathered by Mr. Sershen? A. That is true.

Q. And he knew, did he not, at least under your instructions and within the scope of his work, that he was doing just that, to get those facts which would enable someone to come to a conclusion as to whether or not the bank should or should not be held liable for this alleged passing of the bonds, cashing of the bonds, which was claimed to be negligent according to the first letter sent by the Treasury Department? A. That is the duty of the secret service agent, yes.

Q. So he certainly had everything before him that he needed to have his own opinion?

Mr. Hallinan: I will object to this. He cannot certainly testify to the operation of another man's mind. I will object to the form of the question.

The Court: I will sustain the objection.

Mr. Rosenblum: Exception.

Q. What was there that Mr. Sershen did not have that your Department did have when your Department made this determination as to whether or not the bank was negligent? (496) A. He didn't have the responsibility to make that determination.

Q. What facts outside of the responsibility? A. I don't know what facts he may have or did not have. He had the facts that he developed from his investigation.

Q. You know that he had at least those facts that he gave your Department? A. I assume he did, yes.

Q. Isn't that so; is that right? A. He reported certain facts to the Treasury.

Q. And you don't know whether he did have additional facts? A. I don't know what he had.

Q. You could not tell, could you? A. But I have sufficient confidence in the secret service organization to know that they report what they feel are pertinent facts to us.

Q. That's right, what they believe is pertinent, but you do not know whether he had other facts which he thought at the time may not have been pertinent? A. In my judgment, I am sure he did not, but whether he did or not, I don't know.

(497) Q. Well, you say you are sure he didn't. What do you base that on? A. From my knowledge of our operations.

Q. Then do you now tell this jury and the Court that you are satisfied he had no other pertinent, no other facts? A. I have confidence that he reported all the facts that he had that would be pertinent to this case.

Q. Whether he had additional facts, whether he considered them pertinent or not, you don't know; isn't that so? A. I don't know, no, I don't know what he had, except from his report.

Q. That is right. Those are the facts which came before your department? A. That is right.

Q. And when Mr. Miller said to you that the agent told him that the bank wasn't liable, did you say to him then he had no authority to do it, he had no right to do it, and that all that you have told the jury now? A. If

I may refresh my mind, I can more or less tell you what I said to Mr. Miller at the time.

Q. Please do. A. Reading from a memorandum that I wrote (498) immediately on my return to Washington as a result of my visit with Mr. Miller: I showed Mr. Miller the law under which the Treasury operates the program and pointed out that on the basis of the information developed by Treasury investigators we could not find a basis to relieve his bank. He said one of the Treasury investigators had told him, the bank, that the identification they used was satisfactory and that the bank would not be liable. I replied that the investigators had no authority to make any such statement, that their duty was to develop the facts and apprehend the forgers if possible, and that we did not know of any cases where they had failed to carry out instructions, and pointed out that I could not believe an agent made such statements, that they had specific instructions on the matter.

That is my recollection of our conversation at that time.

Q. Did you tell him that you were surprised that he made a claim that Mr. Sershen said that the bank wasn't liable? A. I replied that the investigators had no authority to make such statements, that their duty was to develop the facts and apprehend the forgers if (499) possible, and that we didn't know of any cases where they had failed to carry out instructions. I pointed out that I could not believe that an agent made such statements, that they had specific instructions on the matter.

That is the gist of my statement to Mr. Miller at the time.

Q. Did you say to Mr. Miller that you were surprised that— A. I didn't say I was surprised. I read exactly what I said.

Q. In other words, the moment you heard the statement that he made to you, you wanted to set him straight and told him that he couldn't have made such a statement? A. I did.

Q. That was the first time you had heard such a statement, isn't it? A. How do you mean?

Q. The first time that you ever heard Mr. Miller or anyone in Mr. Miller's benalf assert the claim which he made about what the agent, he claimed, told him? Without looking at any data, do you have a recollection as to whether that is or isn't the fact, Mr. (500) Heffelfinger? A. I don't know—that is the first time Mr. Miller made that statement to me, yes.

Q. So the first time that you knew, without looking at any data for the moment, please, is that the first time that you heard such an assertion? A. I believe that Mr. Miller in one of his earlier letters had written to the Treasury to that effect.

Q. Right. You knew that, didn't you? A. It was in the file at the time, yes.

Q. Did you know it at the time you talked to Mr. Miller? A. I probably did, yes, because I was familiar with the file when I talked to Mr. Miller.

Q. You knew that to be the fact? A. Yes.

Q. Show me in the letter you wrote back to Mr. Miller saying that no agent had a right to tell you that, immediately upon receipt of the letter in which he informed the Department that Mr. Sershen told him or that the agent told him that in his opinion there was no liability.

Mr. Hallinan: I object to the question——

(501) The Court: If you have any letter show it to him. If you know.

The Witness: I don't know. I will have to look at the record, your Honor.

A. The Treasury wrote to the bank on November 16, 1951 making demand for a reimbursement. The bank acknowledged receipt of that demand on December 26, 1951, in which the following statement is included: "At the time the investigation was made by your Department we were informed that the bonds were properly cashed in accordance with the procedure laid down in your official circular and consequently no claim could be made against us. We note these several matters listed in the second paragraph of your letter as being disclosed by your investigators but call your attention to the fact that item 2 is incorrect according to information that we have and which was given to and confirmed by your investigators."

It was on the basis of that denial by the bank of liability that I took occasion to visit the bank and talk personally to Mr. Miller.

Q. Now permit me to bring your attention again——

The Court: While they are looking for some-
(502) thing: You spoke of specific instructions to the Secret Service agents. What are those instructions?

The Witness: Those instructions come as part of their organization and duties. We in the Fiscal Service don't give instructions to the Secret Service agent.

The Court: What are their instructions, do you know?

The Witness: To make the investigation, sir. We have cautioned the agents from time to time that they are not to make any comment on the liability or non-liability of the bank.

Q. After the letter which you just read, I think it was December 26, 1951, do you know whether or not you or someone in your department contacted the agents that

made the investigation to determine whether there was any basis for the claim by Mr. Miller to the effect that in the opinion of one of the agents there was no liability on the part of the bank? A. Not that I can recall, because we had in our possession before that time the report of the agents, and nowhere in their report did they point out that they made such a statement to Mr. Miller. As a matter (503) of fact, their report would tend to indicate to the contrary.

Q. But you were put on notice, were you not, on December 26, 1951, that a particular claim was made and that was that an agent inform the bank that the bank was not liable? You received that notice in that letter of December 26, 1951? A. That is true.

Q. Did you take any step to determine whether or not that statement was true or not by contacting the agents who made the investigation? A. No. We felt there was no basis for making any inquiry

Q. The fact is you didn't? A. That is right

Q. My question — A. Because we had the report——

Q. My question was did you or did you not? A. We took it that the statement was untrue.

Q. You took it that the statement was untrue? A. That is right.

Q. You knew it was a rather serious statement that the bank was making; am I right? A. Well, it was a statement that what state- (504) ment the bank is apt to make we evaluated. We had the agent's report before us.

Q. But you didn't contact the agent to ask him whether or not in fact, in addition to what he reported he was told by Mr. Miller — A. No.

Q. he told Mr. Miller that in his opinion the bank wasn't liable? A. We didn't make any inquiry.

Q. You knew that was a rather important statement, did you not? A. No, it wasn't important because the

Secret Service agent has no authority to make such a statement.

Q. I think you agreed with me before that even if he didn't have any authority, you don't know whether he made it or not? A. That is right, I don't know whether he made it.

Q. Isn't that right? A. Whether he made it or not had no bearing on the case, in our opinion.

Q. That was your opinion as to what bearing it had. But as far as the fact, you don't know whether he made it or he didn't make it? (505) A. No, I assume he will be available to say whether he did or didn't make it.

Q. That is your assumption about what he will say or won't say. I am asking you to tell us about what you know. A. No, I don't know whether he made it or didn't make it, sir.

Q. Right. And isn't it a fact that the closest you ever got to denying it was by your saying in your letter of February 5th that, "We are not aware of the information given by our investigating agent to you or officials of your bank"? That is the closest you got? A. That is right.

Q. Isn't that a fact? You are shaking your head I think. A. If you are quoting from the letter——

Q. Isn't that the fact? A. Yes.

Q. Is that right? A. Probably so.

Q. Isn't it further the fact——

The Court: Wait. I am a little bit mixed up. I didn't hear the answer.

(506) A. I said it is probably so, sir. There is nothing in the record to show that we made any specific inquiry whether the agent did or did not.

Q. The fact is, however, the question I put to you, isn't

it the fact that the closest you got to taking a position in connection with Mr. Miller's claim was that you wrote in your letter of February 5, 1952, "We are not aware of the information given by our investigating agent to you or officials of your bank"?

Mr. Hallinan: I object to the form of the question: it calls for a conclusion.

The Court: Sustained as to form.

Q. Did you, in addition to what is contained in the letter of February 5, 1952, ever write a letter to Mr. Miller telling him that his statement was not the fact? A. I have the letter of February 5, 1952. Let me read what we told Mr. Miller at that time.

Mr. Rosenblum: May we have that letter marked, please?

The Witness: May I have the privilege of filing a certified copy of this for the record?

The Court: Yes. You can have a copy (507) substituted.

Mr. Rosenblum: We will substitute a photostat in its place.

(Defendant's Exhibit A marked for identification.)

The Witness: May I read the letter, sir?

The Court: Just a second.

Q. In particular, will you point out if there is anything in that letter whereby you unequivocally said to Mr. Miller, "That statement is not the fact"?

Mr. Hallinan: I object to the form of this question, "unequivocally" "closest," any words that call for a conclusion.

William T. Heffelfinger—for Government—Cross

Mr. Rosenblum: I will leave out the word "unequivocally."

Q. Can you point out any place in the letter where you say "The statement you made is not the fact," "Mr. Sershen denies," or anything to that effect?

The Court: We have the letter before us. Isn't that what you want?

A. This is addressed to Mr. Miller on February 5, 1952, signed by Mr. E. F. Bartelt, Fiscal Assistant Secretary of the Treasury.

(508) "Dear Mr. Miller: This is in reply to your letter dated December 26, 1951, regarding the payment by your bank of savings bonds bearing the names of various members of the Nat Chernoff family, at the total redemption value of $6,684.50.

"A careful review of the case has been made and full consideration given to the comments in your letter. We are not aware of the information given by our investigating agent to you or officials of your bank. However, I wish to point out that the statute under which relief may be granted requires the Secretary of the Treasury to determine that the loss resulted without fault or negligence of the paying agent. The circumstances in this case do not justify such a determination.

"The investigation established conclusively that these bonds were paid by tellers of your bank upon instructions from you; that the proceeds of the bonds were handed by the tellers to the bank guard who delivered them to you; and that in at least two instances you personally handed the money to Mr. Mishel. As to the circumstances surrounding these payments, you stated to our investigating agent that Mr. Mishel brought with him another man who remained at a distance, that you did not meet or observe

this individual (509) and did not attempt to identify him as the registered owner of the bonds Mr. Mishel handed you and asked to have paid. Neither your statement or the investigation generally disclosed that any attempt was made at any time to identify anyone connected with the payment of these bonds as registered owners or co-owners. I wish to make it clear that payment in this manner is not in accordance with procedure laid down in Department Circulars and memorandum of instructions and letters to paying agents, but is clearly a violation of all regulations governing the payment of savings bonds

"Accordingly, there is no basis for granting your bank relief from its liability for the loss of this case. Therefore, I must ask that reimbursement in the amount of $6,684.50 be made as previously requested."

In other words we denied that the statements alleged to have been made by the investigators had any bearing upon the bank's liability.

Q. That is the contention of your department? A. That is right.

Q. As set forth in the letter? A. Yes.

Q. My question was a simple one: Do you have in that letter or in any other letter any place where (510) you specifically say you checked with the agent and the agent denies the statement which you attribute to him? A. Not in this case, no.

Q. Not in this case. Now, that is another fact, Mr. Heffelfinger—you say that starting with July, 1950, the Government took the position that the bank was negligent? A. Not in July, 1950, no. We did not make that determination until 1951.

Q. Excuse me. I got the date wrong. I will withdraw that and change it. I have two dates mixed.

Tell us whether or not by your letter of July 19, 1950, the bank was informed of the possibility of an erroneous payment having been made in connection with the cashing

of savings bonds? A. That is true; we notified the bank that he had information which might lead to that conclusion. At that time we didn't know.

Q. That is right. And you also advised him that an agent would call and make an investigation? A. Would call, that is right.

Q. And can you tell us whether or not that agent was alone or with another agent—I withdraw that.

(511) Q. Can you tell us whether or not the investigation was made by one or two agents?

Mr. Hallinan: I object to this, your Honor, on the following grounds: I have developed from this witness three areas. The letter written on July 19, 1950, informing the bank an investigation would be made. No. 2, the receipt of these three letters. No. 3, the conversation with Mr. Miller.

Now, I do not wish to call upon the Court at this time to restrict the cross-examination in this sense that they would have to call this man at a later time, because I think this is a case where we can accommodate the convenience. But I want the record to be unmistakably clear that inquiries into other matters this witness becomes the witness of Mr. Rosenblum and that he should conduct himself accordingly with all the rules of evidence that would pertain to a witness of his own.

Mr. Rosenblum: May I be heard, if your Honor please?

The Court: Well, I don't think we have to labor the point. I will deal with the problems as they arise, question by question.

Mr. Rosenblum: Excepting I urge this as one matter. This matter this witness is being examined (512) about, because I go into a particular time

other than the time that Mr. Hallinan questioned him about——

The Court: I think we will get along faster if you go ahead and put your questions and from time to time decide whether there is any significance to the difference in position or not.

Mr. Hallinan: I am asking your Honor to determine whether or not the inquiry——

The Court: I don't make blanket determinations, as by and large I think they are a waste of time; you spend more time making blanket determinations than you do in applying them. Let us go ahead, and as the questions arise I will deal with them. As far as the form questions are concerned, I will take into account whether it is new matter or cross as to old and in any other way in which it becomes significant, but if doesn't become significant I am unable to take it into account. So let us go ahead.

Q. Can you tell us whether or not thereafter an agent by the name of Sershen made the investigation referred to in your letter of July 19, 1950? A. I don't know the name of the agent or agents that made the investigation, myself. The record may show that.

(513) Q. You have no knowledge of this, as to the name? A. Not on this case. I assume it is in the record here. I can find it.

Q. Do you know an investigation was made? A. Yes.

Q. Can you tell us whether or not from whatever means you can get the information an agent came to the Pennsylvania Exchange Bank in August, 1950? A. We were furnished with a report by agents of the secret service.

Q. What names? A. Covering the period from July 24, 1954, to October 12, 1950, in this Chernoff bond case, investigation made by special

(515) Q. Just one moment, Mr. Heffelfinger. You are reading something not in evidence. I asked you whether you can determine whether an agent or agents went to the Pennsylvania Exchange Bank.

Can you answer that yes or no from a study of your file? A. Yes, two agents.

Q. Can you give us their names? A. Special Agents G. J. Sershen, S-e-r-s-h-e-n, and E. F. Sweeney.

Q. Can you tell us whether or not you can give us the time during which this investigation took place, the time covered, the period? A. July 24, 1950, to October 12, 1950. They interviewed Mr. Miller a number of times.

Q. You cannot read from something that is not in evidence. You cannot say what someone else did unless you have personal knowledge.

Mr. Hallinan: I am sorry. I think Mr. Rosenblum asked if there was anything in the record that reflects that.

Mr. Rosenblum: I asked him to give us the names and dates. I am going to be as technical as you are, if you want to be technical.

(516) Mr. Hallinan: He asked him if there is anything in the record that reflects that, and he has to refer to the record to see.

The Court: Just so that we do not get mixed up here, if you want to make any objection to the hearsay nature of the testimony, you may do so. If you do not do so, I am going to let him go. I do not think he asked for the content. He asked for certain particulars.

Mr. Hallinan: I am sorry. I misunderstood.

The Court: I may be wrong, but that is my recollection. He then went back and checked the record, which he obviously does not have any personal knowledge of, and on the basis of what he finds in

the record he gave the information that Mr. Rosenblum asked.

You could have stopped it by objection if you wanted to.

Mr. Hallinan: No.

By Mr. Rosenblum:

Q. Can you tell us whether or not it isn't the fact that more than a year elapsed after the investigation was completed before your department asserted the claim that the bank was liable?

(517) Mr. Hallinan: I will object to this as leading, your Honor.

The Court: I will sustain it.

Mr. Rosenblum: Exception.

Q. Will you tell us, if you can, how much time elapsed between the completion of the investigation by the agents and the time when your department notified the bank that in their opinion the bank was liable?

Mr. Hallinan: I will object to this on the ground of relevancy, if your Honor please.

The Court: I will sustain the objection.

Mr. Rosenblum: Exception. May I be heard on the question of relevance?

The Court: Yes. Come up. As a matter of fact, we will take our mid-morning recess now.

(Jury leaves courtroom.)

Mr. Perry: Shall I start?

The Court: Sure.

Mr. Perry: Your Honor, the relevance——

The Court: Do you want the witness on the stand or off? Mr. Heffelfinger, we are going to

have a ten-minute recess. So you can stay there or leave, as you see fit.

(518) Mr. Perry: On the question of relevancy, your Honor, the documents we have—at least we have been provided photostatic copies of certain documents—the documents we have indicate that the Treasury Department notified the bank of a possibility of a claim in July of 1950, and the very next communication from the Treasury Department was a letter of November 1951, which means a lapse of time—I don't know—of approximately 15 or 16 months.

Now, in between that time you did have an investigation that ran from July to October, so that as of the last time when the agents were in the bank, which was October of 1950, and as of the first indication from the Treasury Department that they were rejecting the bank's claim that the bonds were cashed properly about 13 months elapsed.

Now, your Honor, as we have elicited from the witness, as soon as the Government sent its letter of November 1951 to the defendant claiming that the bank should pay, the defendant responded in December of 1951, telling him that in effect—I don't have the letter before me—in effect they were led to believe by the agent that there was nothing improper about the (519) cashing.

Now, we submit the relevancy of that, your Honor, would show from the lapse of time from the first letter sent by the Government in July of 1950 and from the lapse of time after the Government's investigation in October of 1950 that if the defendant had been told by Sershen that the bank was in the clear—and that is what he claims and that is what the course of action he has taken in-

dicates—that certainly the lapse of time would be relevant on whether he had a right to believe that when told that by Sershen.

So that when he wrote his letter in December of '51, and that is the first count in the indictment, where he says, "We were informed of that," then the fact of the lapse of time would indicate for the jurors' determination whether or not his statement that Sershen had told him is true.

The Court: You say he would be justified in submitting a false letter in reliance on Sershen's statement?

Mr. Perry: We don't say it is false. I had better get the letter for your Honor.

The letter says, your Honor, second (520) paragraph:

> "At the time the investigation was made by your department we were informed that the bonds were properly cashed in accordance with procedure laid down in your official circular . . ."

Now, the importance of this statement, Judge, is in the first count of which this letter is based——

The Court: May I see the letter? I have never seen it.

(Mr. Perry hands document to Court.)

The Court: All right.

Mr. Perry. Keep in mind, your Honor, the first count makes the flat assertion that this defendant made a false statement when they say, in effect, he said the bonds were cashed properly, whereas in truth and fact they were not cashed properly. The letter that was sent shows the defendant saying, "We were informed that the bonds were cashed properly."

So I would respectfully submit this whole first count would stand or fall. There is a legal question which I am leaving aside for a moment, but getting beyond the legal question, the whole count will stand or fall on whether or not the (521) defendant knowingly and wilfully uttered an untrue statement when he said, "We were informed that the bonds were properly cashed."

And I say one of the things that will go to have a prime bearing on that question of whether or not the defendant had a right to rely on what he said Sershen told him is the lapse of time between the Government's actions here.

Mr. Hallinan: If you have concluded, may I be heard before your Honor rules?

The Court: Yes.

Mr. Hallinan: I think that whatever Mr. Miller may have relied upon has nothing to do with the period of time. The purpose of this is quite apparent from Mr. Rosenbium's opening statement.

I think the whole construction they are going to place upon this letter is that it was a mere opinion and it was the Treasury Department's opinion and they were dickering back and forth and there were not flat assertions made.

With respect to the last statement, we are prepared to argue briefly in answer to that. We will show as a fact he was not informed by the Secret Service agent and that this is a very cute (522) way of saying to the Treasury Department, "These bonds were cashed in accordance with your circular."

It is a clever way of saying it, yes, but nonetheless, in effect, a direct statement to that effect. But whatever Mr. Miller may have relied upon I think has nothing to do with a lapse of time.

The Court: I do not see any value is going into the question of lapse of time. As a matter of fact, we all know when we deal with the Government departments they have got a whole lot of problems besides this one, and why the time went by or why it did not go by, which is the really significant thing, I think is—I doubt that even that would be significant, but we get off on the whole question. Mr. Miller can say, if he wants to, what he relied on and why he did things, if he wants to. If his reasoning stands up in the jury's mind, he would have made his point for whatever it is worth, but I do not think we need go beyond that to establish the facts independently as though they had some validity in themselves.

Mr. Perry: Judge, you are putting us at a great disadvantage.

The Court: How?

(523) Mr. Perry: For this reason: The photostats we show you here, your Honor, we got ultimately on order of Judge Ryan in the latter part of September. These are photostats provided to us—no, I guess we got them ourselves; but, in any event, Mr. Hallinan had the file of the bank, Pennsylvania Exchange Bank.

So there are letters in that file, in some instances there are photostats, but, in any event, we got photostats of what is in the file. We do not know what is in the Government file. All we have in the file is that on November 21, 1951, the Government sent a letter of which we now have a copy. We would certainly like to ascertain from this witness whether there was anything before November 1951, because all we know is November 1951. If there were one before then, we should have it out and we should know it. If there were not one

before, which is what we believe to be the fact, then we should be entitled to make whatever argument there is to the jury on that matter. Your Honor takes the position that the Government acts slowly and therefore——

The Court: I am just stating my real (524) position is I am not going to get into a speculation of why 15 months went by before the letter came in. I have other issues to try.

Mr. Perry: We are interested in the fact. All we are interested in is the fact.

The Court: That has no materiality.

Mr. Perry: It does have, Judge. I am sorry. I think it does have, your Honor.

The Court: Where?

Mr. Perry: It seems to me, Judge, that Mr. Hallinan said they will prove what the fact is. What he means is he is going to produce Mr. Sershen, who will give certain testimony, and we will produce Mr. Miller, who will give other testimony, and it will be for the jury to determine what the fact is. But, in any event, your Honor, if I were a person who had dealings with the Government and if I say it is the fact, and let us assume it is the fact, that an agent says, "You are in the clear. Don't worry. Everything is all right," and then nothing happens for the longest time, it seems to me that I would certainly be in a position to say, "Heavens, I thought everything was all right," and then when the Government months and months over a year later—says, (525) "You are liable," I say, "Wait a minute. I was told that everything was all right and look, 15 months went by, or 11 months or 13 months went by. I didn't have any reason to feel anything was wrong in what the agent told me."

It goes to the heart of the defense. It goes to the question of whether Miller knowingly and wilfully made a false statement.

The Court: I won't disagree with you and I will sustain Mr. Hallinan's objection, my view being that if in fact—this is a completely different question. If that letter is in fact a false statement of fact, to use Mr. Hallinan's claim, cutely worded, why, it would be no more justified if Mr. Miller knew it was false. The fact that someone had told him he was in the clear would not be a justification for it. In any event, I do not see that the passage of time is of any significance. It is going to get us entangled in explanations on an issue that I do not think is going to help us in resolving the material issues of the case.

Mr. Rosenblum: We don't want to go into the reasons for the delay. We want to establish a certain length of time——

(526) The Court: I do not think you can go into the passage of time without going into the reasons for it, and I do not think either the passage of time or the reasons for it are going to help solve the material issues in this case.

Mr. Rosenblum: We do not intend to go into the reasons, but we intend to prove, if we are entitled to prove, that a certain length of time passed. We are not going to ask this witness as to what occurred during that time or what may or may not have caused the delay.

The Court: I think I understand what you want.

Mr. Perry: May I ask a point of clarification? I am not disputing your Honor's ruling. Are you leaving this open—I think it would be foolish for us to recall this witness during the defense. That we certainly all want to try to avoid.

The Court: The fact whose witness he is has nothing to do with it. It is irrelevant as I see it. As a matter of fact, if Mr. Hallinan had not gone into the question of what the agent said, I am not sure I would have let you go into it at all. But we are in it.

(527) Now, are you people strong enough to go ahead without any further recess now, and I will give you an extra 15 minutes at lunch?

Mr. Rosenblum: I would rather take a few minutes now.

The Court: All right. I will ask you to come back promptly. The jury is ready to come back right now, so take three or four minutes.

Mr. Perry: This might save a little time, your Honor. In this file that we have gotten from the bank there are a number of letters from the Treasury Department.

Now, rather than go through the witness here and at least ask for identification of all of these so we can later use them in the defense if we choose to, how would you feel, Mr. Hallinan, about agreeing that there would be no question as to the fact that the letters bearing the Treasury Department insignia are actual records of the Treasury Department and if we offer them the only question before the Court will be relevancy?

Mr. Hallinan: No question at all.

(Short recess.)

(528) The Court: Bring the jury in.

Mr. Rosenblum: May I note an exception before the jury comes in?

The Court: Sure.

(Jury enters courtroom.)

William T. Heffelfinger—for Government—Cross

By Mr. Rosenblum:

Q. Can you tell us whether or not, Mr. Heffelfinger, after the letter which you referred to before on November 16, 1951, whether from that time until some date in August of 1952, when the money was paid back to the Government, whether there was a series of letters exchanged between your department and the Pennsylvania Exchange Bank wherein you contended that they were liable and they repeatedly contended they were not liable?

Mr. Hallinan: I will object to the form of the question, and on relevancy, your Honor.

The Court: I will sustain it as to form.

Mr. Hallinan: I think it is the same point we just argued.

The Court: Well, it may be introductory to something else, so I don't know whether it is.

Mr. Rosenblum: Exception.

Q. Can you tell us whether or not between the (529) date of November 16, 1951 and August 6, 1952, a series of letters were exchanged between your department and the Pennsylvania Exchange Bank? A. There were some letters exchanged, yes.

Q. Can you tell us whether or not in each instance your department insisted that the bank was liable and the bank insisted it was not liable?

Mr. Hallinan: I will object to this, your Honor, on relevancy.

The Court: Sustained. Well, all right, I will sustain the objection. I also think that I would sustain it on—I don't care to go into that kind of characterization of the letters.

William T. Heffelfinger—for Government—Cross

Q. Did your department, up to August of 1952, contend that the bank was liable?

Mr. Hallinan: I will object to this, your Honor, on the grounds of relevancy.

The Court: Well, on that ground I will overrule the objection. I think we already have that contention in the record.

Q. Can you answer that question, please? A. Yes. The Treasury's position has always been that the bank was liable.

Q. And was it always the position of the bank (530) up to the present moment that the bank was not liable, so far as you know? A. I think that was the tenor of their objection to make payment to the Treasury.

Q. And you knew, did you not, that the bank at all times had been bonded? A. So it said in its letter to us.

Q. Your department was so informed? A. That's right. The bank informed us that they were taking the matter up with their bonding company and expected the bonding company to make the payment to them.

Q. The bonding company would make the payment to them? A. Yes.

Q. And then they sent the money to you; is that right? A. That's right.

Q. Isn't it the fact that at the very beginning you suggested in your letter, that is, your department, that they should notify their bonding company? A. We put the bank on notice that that is the businesslike way of protecting their rights. We try to take all action we can to protect the rights (531) of a bank.

Q. So if the bank wished to avoid a controversy they could have notified the bonding company?

Mr. Hallinan: Objection.

The Court: Sustained.

Mr. Rosenblum: Exception. No further questions.

The Court: Any further questions?

Mr. Hallinan: No.

The Court: What about that Exhibit A; are you going to get a photostat?

Mr. Rosenblum: May we have a photostat take the place of the exhibit marked for identification?

Mr. Hallinan: They have from our file a photostatic copy of the original. This is a copy in his file. The original is in the Chernoff file which we got from the bank.

Mr. Rosenblum: We do not have a photostat of this letter. We have it as it was before certain notations were made, and all we are asking is if a certain paper has been marked for identification and we do not have an exact copy, a photostat be submitted.

The Court: You make a photostat, Mr. Hallinan, give them a photostat and send the letter (532) back to Mr. Heffelfinger.

Mr. Hallinan: I want to, on behalf of the Government, however, now that Mr. Rosenblum pointed out there are certain notations on this copy, say the witness is here now and I suggested to him, and I think it is proper, I don't want anybody interpreting notations later if this witness can tell us what they are.

The Court: (To witness) Come on back.

Redirect examination by Mr. Hallinan:

Q. If you know, Mr. Heffelfinger, can you tell us what the various notations on the bottom are? A. Yes. The

notations on the bottom show that the letter was originally dictated by one of the clerks in our Chicago office and it was changed by another clerk at that office. It then is initialed through their organization, reviewed by the clerks and officials responsible for this case. They show their approval by initials. It shows it was initialed after a series of letter initials by Peyton, the Deputy Commssioner in Chicago. It then was received in Washington and initialed by a clerk in the office of the Commssioner of the Public Debt. It was then initialed by the Assistant Commissioner (533) of the Public Debt and by the Commissioner of the Public Debt. It was then received in the Office of the Fiscal Assistant Secretary, and I reviewed it and it has my initials here. After that it has a stamp which indicates it was signed by E. F. Bartelt, Fiscal Assistant Secretary, which is the signature on your photostat copy of the original.

Mr. Hallinan: Do you desire a photostatic copy of this letter?

Mr. Rosenblum: Yes, Mr. Hallinan.

(Witness excused.)

VIRGINIA GRAEF resumed.

Cross examination continued by Mr. Rosenblum:

Q. Miss Graef, tell us, please, how long have you been in the business of being associated with one or more banks? A. Well, I first started for the Pennsylvania Exchange Bank in September of 1947, as I said before, and then in November of 1950 I went to work for Irving Trust.

Q. November— A. Yes.

Q. —of 1950? A. That's right.

(534) Q. You stayed at the Pennsylvania Exchange Bank from—what date did you give? A. September of '47.

Q. —September of '47 to November— A. February of 1950.

Q. February? A. February.

Q. I thought you said November. A. November is when I started with the Irving Trust.

Q. But you were with the Pennsylvania from September 1947— A. Approximately two and a half years.

Q. —to February. Is that near the end of February, do you recall? A. I couldn't give you the exact date of that, no.

Q. And now you have been with the Irving Trust Company? A. Irving Trust Company six years in November.

Q. Six years. So you have been in this business all together about eight and a half years? A. Approximately.

Q. Can you tell us whether your duties in the (535) Irving Trust Company are about the same as they were at the Pennsylvania Exchange Bank? A. No, they are not.

Q. You hold a different type of position? A. Yes, I do.

Q. I think you gave it yesterday, but would you tell us just what you do now? A. Well, I open special checking accounts and I open savings accounts.

Q. I see. I think you testified yesterday that one of your duties, which was especially assigned to you at the Pennsylvania Exchange Bank, was that of cashing bonds? A. That is correct, yes.

Q. And what were your other duties? I am only referring now to the Pennsylvania Exchange Bank. A. Yes. I would cash special checking checks, I would take in deposits, I would post on the special checking ledger.

Q. Post on the what? A. On the special checking ledger.

Q. Anything else? A. That's about all. You asked me other than cashing bonds; is that correct?

(536) Q. Anything other than and in addition to that. You said you were the person who was in charge of— A. The cashing of bonds, that is correct.

Q. The cashing of bonds? A. Yes.

Q. How many different types of bonds did you cash? A. I believe it was the Series E, United States Government Savings Bonds.

Q. Were there no other types? A. Those were the only ones I think I cashed.

Q. Weren't there some bonds referred to as service, Government Service? In other words, I think "service" is in it, Government Service Bonds. A. The only ones I recall are the Series E.

Q. Do you recall whether the bank was cashing any bonds known as something like servicemen's bonds, bonds issued to men in service, men and women in service? A. It's possible.

Q. Did you have an assistant in this work? A. Yes, I did.

Q. What is the name of your assistant? A. Her name was Olga Durham.

(537) Q. D-o-r-a? A. No, I believe it was D-u-r-h-a-m, something like that.

Q. And that was at the Pennsylvania Exchange Bank? A. That's correct, yes.

Q. Can you tell us who your relief was? A. Who my relief was?

Q. Yes, on occasions—was it this lady Olga Durham, D-u-r-h-a-m? A. m. I am not sure of the spelling.

Q. Something that sounds like that? A. That's right.

Q. Was she your relief? A. Yes.

Q. So that on occasions when you went out to lunch she would relieve and take up the post you had until you came back from lunch? A. Yes.

Q. On occasions when you were ill, likewise? A. Yes, that's right.

Q. Can you tell us what the practice was in connection with the cashing of checks?

Mr. Hallinan: I will object to this on the (538) ground that it is outside the sphere of direct examination, and I would request most strenuously at this time that if he wishes to examine on this point she should be called at a later time as his witness.

The Court: I will let him examine. Go ahead.

Q. What procedure did you follow in cashing checks? A. I only passed the special checking checks for people that were known to me.

Q. People what? A. People that were known to me. I didn't handle the commercial accounts.

Q. In those instances, can you tell us when it was necessary to get an officer's approval? A. Well, it wouldn't be. If the person was known to me and they had enough money in the account, it wouldn't be necessary to get an officer's approval.

Q. Do you recall whether or not on occasions you did get approval from one or more of the officers of the bank in connection with the cashing of checks of the type you have referred to? A. No, I don't recall now whether or not I did.

Q. Can you tell us in connection with the cashing (539) of bonds what instructions had you received, if any, prior to that time? A. About what?

Q. About what you should do when you cashed a savings bond. A. Well, if the person were known to me I would just cash it. If he were not known to me, I would send him over to one of the officers to have it approved.

Q. Is that all that you knew about the procedure you were to follow in connection with the cashing of bonds? A. Well, just what is it that you want?

Q. I want to know everything that you knew about what procedure you had to follow in connection with the cashing of bonds. A. Do you want me to tell what the person would have to do to fill out a bond redemption form? Do you want me to go through all that? I don't know what you are looking for.

Q. I want to know what procedure you followed aside from—what did you know about the steps you had to take before you cashed a savings bond? A. If the person were known to me or not known to me?

(540) Q. In both instances. A. All right. If the person were not known to me, I would ask him to go over to one of the officers to have the bond approved. The officer would initial the bond; the person would come back to my window; I would get out a bond chart to determine what amount had to be paid out; I would place a stamp on the face of the bond. The stamp would have the date on it, the name of the bank, the amount paid out, my name. I would hand the person a bond redemption form to sign. That would have the name of the bank on it, the date, the amount paid out, and that was used at the end of the day to help me prove up my cash and later became a permanent bank record.

Where the person was known to me, I would do everything other than sending him over to one of the officers.

Q. Can you tell us whether in any instance if a person was not known to you——

Mr. Rosenblum: I withdraw that.

Q. It was the duty of the teller, was it not, to cash savings bonds? A. It was my duty to cash savings bonds.

Q. You were the one principally in charge of it; (541) is that right? A. That's correct.

Q. And you being the person in charge of it, can you tell us whether or not on an occasion when a person who was not known to you presented identification, you would cash it or not? A. No, I was not authorized to do that.

Q. In other words, you had no instructions as to whether the suggested steps to be taken were of one kind or another in a case where a person was not known to you?

Mr. Hallinan: I will object to the form of the question. I do not quite understand it either.

The Court: Sustained.

The Witness: Would you repeat the question?

The Court: You do not have to answer it.

Q. In other words, then, you say those two steps that you took, one in the case of a known person and the case of an unknown person, that your instructions were that you were to send it to an officer for approval?

Mr. Hallinan: I will object to the form of the question, your Honor.

The Court: Sustained.

(542) Q. Didn't you say in the case of a person known to you you would cash the bond yourself? A. That's correct.

Q. If the person was not known to you, you sent the person to an officer—for what purpose? A. To have the bonds initialed, to have the bonds approved.

Q. Have the bonds initialed? A. Yes.

Q. And to have the bonds approved? A. That is the same thing. By placing his initial, I would know it's all right to cash it.

Q. I think you gave us your duties before and you say you were in the Pennsylvania Exchange Bank for about two and a half years? A. That's right.

Q. Was it a pretty busy little bank? A. It was busy, yes.

Q. Can you tell us whether or not it isn't a fact that each day you handled hundreds of transactions? A. I handled a number of transactions, yes.

Q. Hundreds of transactions, deposits, receipts, cashing? A. Well, I handled a number of them, yes.

(543) Q. You know that the bank had thousands of depositors, don't you? A. Yes.

Q. Were you pretty busy when you were working there? A. Yes.

Q. Did you see a lot of people coming in and out of the bank constantly? A. Yes.

Q. You said you knew a man by the name of Mishel. A. Yes.

Q. Can you tell us whether he was a depositor of the bank at the time you went to work for it?

Mr. Hailinan: I will object to this on the ground it is outside the scope of direct examination, your Honor.

The Court: I will let him ask it.

A. I don't know whether he was a depositor at the time I went to work, but I know he was a depositor of the bank later.

Q. Did you see him coming in and out of the bank constantly? A. Yes.

Q. Many times? A. Many times.

(543a) Q. Sometimes many times in one day? A. Many times in one day, yes.

Q. And did you ever speak with him? A. No, I never did.

Q. What is that? A. No, I never did.

(544) Q. Do you have a recollection of about when you saw him for the first time? A. No, I couldn't answer that.

Q. Do you recall seeing him with various officers from time to time? A. Yes, he was all over.

Q. Also, did you see him with Mr. Miller from time to time? A. Yes, I did.

Q. Is that right? A. Yes.

Q. Do you have a pretty definite recollection as to the times when you saw him with any particular officer?

Mr. Hallinan: I will object to this, your Honor, on the ground that it is outside the scope of direct examination. May we approach the bench, your Honor?

(The following proceedings took place at the bench out of the hearing of the jury.)

Mr. Hallinan: I think the purpose of this area of inquiry is, quite obviously, from what we have had in the trial and including the opening statement that it is a suggestion that other officers may have (545) been the guilty ones in handling——

The Court: I am aware of that possibility and I will watch it. I think he has not gone beyond probing the extent of her recollection and so forth with respect to Mishel. I think he is entitled to have that on cross. She said that she saw Mishel do certain things with Miller. He is entitled to prove the reliability of her recollection in several different ways.

Mr. Rosenblum: I think on direct examination it was brought out that she saw him at Miller's desk.

The Court: We will go ahead. I will watch. If I think that the sole purpose of the questioning is to establish a defense rather than to go to the reliability of the witness, why, I will watch it, and

you watch it and make your objection. But I don't think he has gone that far yet.

Mr. Hallinan: All right.

(The following proceedings took place in the presence of the jury.)

Mr. Rosenblum: Will you read the question, Mr. Stenographer?

(Question read.)

A. Well, I have seen him with other officers, yes.

(546) Q. But you can't fix the time, can you? A. No, I can't fix that in time.

Q. Can you fix all the times or occasions when you saw him with Mr. Miller? A. No.

Q. You say you saw him several times in one day with other officers or with Mr. Miller? A. That is correct.

Q. Is that right? A. Yes.

Q. I think you told us this was a busy bank. Will you tell us whether or not you made it a practice to make the observation to yourself as to when and where Mr. Mishel went at the times he was in the bank? A. No, I just know he came in, I saw him come in.

Q. You saw him coming in; right? A. Yes, I saw him come in.

Q. During the period of time you have covered for us, you saw him with, as you said, various officers, including Mr. Miller? A. That is correct, yes.

Q. Can you give us any specific time when you saw him with Mr. Miller, other than the one you refer to? (547) A. No, I can't give you the specific time.

Q. On the occasion when you cashed the Chernoff bond—let me ask you this: Did you feel there was any impropriety in what you were doing in cashing that bond? A. At the time I didn't think about it.

Q. If you had any feeling about the impropriety you

would have brought it to someone's attention, wouldn't you? A. I don't know if I would.

Q. In other words, you cashed these bonds like you cashed other bonds? A. I cashed them. I was told to cash them, and I cashed them.

Q. As you cashed them on other occasions when you were told to cash them?

Mr. Hallinan: I think she had, but I would like to have the witness allowed to answer the question.

The Court: Read the question.

(Question and answer read.)

Q. You say you were told to cash them. You cashed them; you had approval of an officer, is that right? A. Mr. Kennedy told me to cash them, that Mr. Miller said it was all right to cash them, therefore, (548) I assumed I had Mr. Miller's approval.

Q. Did you have occasions when other officers sent similar word to you in connection with cashing of bonds? A. The bonds were usually approved when they were sent over that way.

Q. Were these bonds approved when they were sent over that way? A. No, they were not.

Q. Do you recall speaking to Mr. Berry, my associate, on July 31, 1956, at the Irving Trust Company? A. Yes, I do.

Q. Do you recall he was accompanied by another man, Sol Sokolsky, another short fellow? A. Yes.

Q. Do you recall whether or not you told him at the time you saw no impropriety in connection with the cashing of those bonds? A. At the time, I didn't, no, I didn't think about it.

Q. What I am asking you now is, at that time did you

see any impropriety in connection with the cashing of the bonds? A. It was unusual.

(549) Q. Now, will you please answer my question?

Mr. Hallinan: I think she answered.

The Court: I will let it stand.

Q. At the time did you feel that you were doing something which was improper? A. I felt the bonds should have been initialed at the time, yes.

Q. You felt the bonds should have been initialed? A. Yes, Mr. Miller should have initialed them.

Q. Did you ask Mr. Kennedy to get the bonds initialed? A. He said it was all right to cash them, that Mr. Miller had approved them. And he didn't go back——

Q. Did you bring to his attention— A. Yes, I did.

Q. (Continuing) —that you would like to have the bonds initialed? A. Yes, I did.

Q. You say that Mr. Kennedy said that Mr. Miller approved it and, therefore, you cashed it? A. That is correct, yes.

Q. Did you make it a practice to ask that every bond be initialed that you cashed? A. No, I didn't.

(550) Q. I am not talking about Mishel's. A. Bonds that were known to me, no.

Q. Outside of bonds not known to you. When persons were not known to you, did you make it a practice in every instance to— A. Where the person was——

Q. (Continuing)—to have the initial put on? A. Where the person was not known to me, yes, I wanted the bonds initialed.

Q. But where you received word, where the person isn't known to you, from an officer, that, to you, was in effect telling you it is all right to pay, isn't it?

Mr. Hallinan: I object to the form of the question, your Honor.

The Court: I will sustain the objection.

Mr. Rosenblum: May we have the bonds, please? May I have a moment, your Honor?

Q. When did you receive instructions as to the procedure you were to follow in connection with the cashing of bonds? A. I suppose when I first started working as a special checking teller.

Q. You say you suppose when you first started. Would that be when you started to work with the bank? (551) A. No, it wouldn't be, because I did not start in as a special checking teller. It was after that.

Q. What did you start as? A. I started work in the loan and discount department.

Q. On what? A. I started in the loan and discount department.

Q. Do you recall about when you were assigned to this job that you just discussed, such as cashing bonds? A. Oh, it may have been about perhaps six months to a year later, about six months——

Q. What? A. About six months later.

Q. Who gave you the instructions? A. Well, the man—Mr. Magness, I believe.

Q. Mr. Magness? A. Yes.

Q. What was his position in the bank at that time? A. He was a special checking teller and I helped him.

Q. And it was he who gave you the instructions as to the procedure you were to follow in connection with the cashing of bonds? A. I can't give you a specific answer on that (552) because I don't know who gave it; I imagine it was Mr. Magness.

Q. Did you see any circular letter with regard to the— A. No, I don't believe I did.

Q. (Continuing) —cashing of bonds?

Mr. Hallinan: I object to this, your Honor.

The Court: She has answered. I will let it stand. Did you hear the answer?

Mr. Hallinan: No, I did not.

The Court: Will you read the answer?

(Answer read.)

Q. Now, on the occasions when you say you saw Mishel come in and out of the bank, the number of times you have told us, will you tell us whether you have a recollection as to whether he always came alone or whether he came in with other people, from time to time? A. He may have had people with him at different times, yes.

Q. Could you pin-point the particular times when he did or he didn't have people with him? A. No, I couldn't.

Q. I think you said on one of the occasions when you cashed the bonds, which you testified about on your (553) direct, you looked over and you saw Mr. Mishel sitting near or at the desk of Mr. Miller? A. Yes.

Q. Would you know when he came into the bank on that day? A. No.

Q. When you know who he spoke to first when he came into the bank on that day?

Mr. Hallinan: I object to the form of this question, your Honor. It assumes something. I think he can ask——

The Court: All right, I will sustain the objection at this point.

Q. Will you tell us whether or not you know how long he was at the bank prior to the time that you say you saw him sitting near Mr. Miller's desk? A. No, I can't.

Q. I can't hear you. A. No.

Q. So that you don't know whether he was there a matter of minutes or hours, is that right? A. That is right.

Q. You don't know whether he came in alone on that occasion or came in with others?

(554) Mr. Hallinan: I object to the form of this question, your Honor.

The Court: I will overrule the objection.

Q. Is that right? A. What was the question?

Q. You don't know whether he came in alone or whether he came in with others on the occasion that you testified about? A. That is right.

Q. So that can you tell us whether you know as to whether or not if he came with others he was at Mr. Miller's desk with some other person or persons? A. No, he wasn't at Mr. Miller's desk with some other person because he was there alone.

Q. That is when you looked over? A. When I looked over——

Q. I am asking you——

The Court: Please.

A. When I looked over both times he was seated alone with Mr. Miller.

Q. My question is, at the time when he came into the bank would you know whether or not—I think you said a moment ago you didn't know whether he came in with a person or didn't come in with a person; is (555) that right? A. That is right.

Q. You are telling us what you saw? A. That is right.

Q. On the occasion when you looked over, and that was after Mr. Kennedy had talked with you? A. That is right.

Q. And before that you can't tell us whether or not he came in with another person or he didn't? A. No.

Q. You can't tell us whether he brought in another person to Mr. Miller or he didn't? A. No.

Q. If he brought one, you know nothing about it? A. No.

Q. Are you sure there were chairs alongside the railing, in fact, chairs on either side of the railing, where Mr. Miller's desk was and where the other officer desks were? A. Oh, there were chairs on the platform, yes.

Q. Do you recall now whether or not on that occasion any people were sitting in those chairs? Will you tell us one way or the other? A. From where my place was looking across, (556) there was no one there other than Mr. Mishel and Mr. Miller.

Q. At his desk?

The Court: Don't interrupt.

Mr. Rosenblum: I am sorry.

A. That is right, at his desk.

Q. But do you know whether or not anyone was sitting in those chairs on either side of the railing? A. Not in my line of vision looking across, looking directly across there was no one seated other than Mr. Mishel and Miller.

Q. The only person at the desk with Mr. Miller was Mr. Mishel?

Mr. Hallinan: I object to that.

The Court: You go ahead and back up to the table there and see if we can get this slow enough so that everybody can hear what is going on.

Mr. Hallinan: I object to the last characterization.

The Court: Will you read the question?

(Question read.)

Mr. Hallinan: Her answer was, "In my line of vision." It was broader than that.

The Court: I will sustain the objection, (557) and as far as the fact sought, we have had that two or three times.

Q. Do you recall whether Mr. Perry, in the presence of Mr. Sokolsky, when he talked with you at the Irving Trust Company on July 31, 1956, with regard to whether or not anyone was sitting or standing close by, do you

recall whether you told Mr. Perry and Mr. Soko'sky that you couldn't tell one way or the other? A. That was not the way the question was put, I don't believe, at that time. He asked a question, if there might be someone standing at the door or something like that. Well, naturally, I wouldn't know that.

Q. Standing at the door? A. That is the way he put it, if there someone—could there have been someone standing near the door. That is the way——

Q. The door to the gate or door to the entrance of the—A. The door to the entrance of the—the door of the bank, the door of the entrance to the door of the bank. That is the way I recall the question. If there could have been anyone near the door or standing around.

Q. You say the bank was busy and people were coming in all the time and going out all the time, is (558) that right?

Mr. Hallinan: We have had this, your Honor, we have had this twice, your Honor.

The Court: Sustained.

Q. Was there a door in the gate through which one could pass and get on to the officers' platform? A. There wasn't a door; there was an opening, I believe.

Q. Was there a gate? A. No, there was an opening.

Q. One you could step on to and then go to the various desks? A. That is right.

Q. Do you recall whether the opening was in the vicinity of Mr. Miller's desk? A. It was a little more to the left, I believe.

Q. That is, as you approached, Mr. Miller's desk it was a little to the left? A. It was nearer to the door coming in, coming into the bank, nearer there.

Q. As you came into the bank, was Mr. Miller on the left-hand side or the right-hand side? A. I beg your pardon?

(559) Q. As you came into the bank was Mr. Miller's

desk on the left-hand side or the right-hand side? A. On the left-hand side.

Q. You say the opening— A. Well, it wasn't directly in front of Mr. Miller's desk. That is what I meant to say. The opening, it was a little more to the left of his desk. It was——

Q. It was close by? A. It was close by, yes.

Q. Can you tell us what the practice was in connection with the use of the redemption forms? A. I don't understand the question.

Q. Well, in connection with the cashing of a bond was a redemption form used? A. Yes, it was.

Q. And you said there were pads of them in blank? A. They were kept in my desk. There was one pad, usually.

Q. And they were in blank? A. That is right.

Q. Right? A. Yes.

Q. And can you tell us what was done by you or by (560) the person in connection with the cashing of a bond, what was done in connection with the preparation of a redemption form? A. Well, I would put the amount paid out on there. I would have the bank stamp placed on, and the date, and the person would sign it.

Q. You always insisted on that? A. That was what was done, yes.

Q. What is that? A. Yes, that is what was done.

Q. That was pursuant to the instructions you received? A. I believe so, yes.

Q. And you always insisted that the person signed the redemption form?

Mr. Hallinan: Just a minute. Your Honor, that is why I objected most strenuously when we got into this area. There are two situations to which this witness has testified: Where there is an account at the bank and where the person is not known. I wish that the question would be limited so it is clear. This question is not.

The Court: Well, read the question back.

(Question read.)

(561) The Court: Well, I will let her clarify it as she sees fit.

You don't have to answer it yes or no; you just tell us what you did.

Mr. Rosenblum: I am sorry. I just did not get that. What was that answer?

The Court: She hadn't answered it. I said I would let her answer the question but not necessarily yes or no. (To the witness) Just tell us what you did and if there were different situations.

Mr. Rosenblum: All right.

Q. Please do. A. If the person were known to me he would sign the redemption form in my presence. If he were not known to me he would go over to one of officers and sign it in their presence, and then come back.

Q. And you would then accept the redemption form together with the bond and you would cash it when it came from an officer? A. That is right.

Q. But in every instance where you knew the person, the rule was followed that the person whose bond you were cashing had to sign the redemption form in your presence, is that right? (562) A. Yes, that is right.

Q. Can you tell us whether that was an unalterable rule? A. I beg your pardon?

Q. Can you tell us whether it was an unalterable rule or one that you couldn't alter? A. Well, that is the way it was done.

Q. Now, do you recall speaking with a secret service agent by the name of Sershen? A. Yes, I do.

Q. Can you tell us about when you talked with him? A. I believe it was about in the summer of 1950.

Q. And where did he see you? A. At my house.

Q. Did you speak to him again after that? A. Yes.

Q. Do you recall whether he made a memorandum in your presence of the talk you had with him?

Mr. Hallinan: I will object to this. I don't see the relevancy of the memorandum of a secret service agent.

The Court: I will sustain the objection to it.

Mr. Rosenblum: Exception.

(563) Q. Was he alone at the time he talked with you or was there another person with him? A. He was alone at the time.

Q. On the occasion when you were away, do you recall whether or not you gave instructions to the person who relieved you as to the steps which were to be taken in connection with the cashing of bonds? A. Yes, I would have done that.

Q. You did give such instructions? A. I believe I did.

Q. You don't have a positive recollection, but that is your best belief? A. I don't have a positive recollection, no.

Q. But that is your best belief? A. I believe that is the best I can give.

Q. Did you give such instructions to the lady you mentioned before? A. I may have; I can't give you a definite answer.

Q. Did you give such instructions to anyone else? A. No, she would be the only one working with me.

Q. So that during the time that you were with the Pennsylvania Exchange Bank you say the only person who did the kind of work you described to us in connection with the savings bonds that you know of was this lady (564) whose name you mentioned before? A. Well, that is not correct. About cashing bonds?

Q. Yes. A. The other tellers would do that.

Q. On the occasions they did that. But when you were away? A. They did on occasions.

Q. Will you tell us whether you gave them any instruc-

tions as to what was to be done? A. No; they would have known.

Q. That is, what they had been there for. When you were there? A. Yes, they were——

Q. The fact is, you didn't give them instructions? A. I didn't give instructions, no; that is correct.

Q. I think you told us yesterday about the cabinet where the redemption form pads, before they were filled out, were kept in a stationery cabinet? A. Well, they would have been kept in the supply room.

Q. Do you recall ever being in the supply room? A. I may have on occasions, yes.

Q. Do you recall whether in the supply room (565) there are a whole bunch of these pads in blank form? A. I don't recall just what was in the supply room. There may have been, yes.

Q. When you needed another pad, what did you do? A. I suppose I sent somebody up for it.

Q. To get it from the supply room, is that right? A. Yes.

Q. You told us you had a pad that you kept in your desk? A. That is right, yes.

Q. That wasn't the pad available to people in the bank, was it? A. No.

Q. There were pads in the supply room? A. Yes.

Q. And there were many pads in the supply room, is that right? A. Yes.

Q. In fact, on occasions, at night, did you leave your pad in your desk? A. Yes, I did.

Q. Did you lock your desk at night? A. I don't think I did, no.

Q. Don't you recall? Did you have a key to your (566) desk? A. I must have, but I don't recall whether or not I locked it.

Q. Will you please tell us what the practice was——

Mr. Rosenblum: Does your Honor wish to stop at a certain time?

The Court: No. We will go on about another seven or eight minutes.

Mr. Rosenblum: All right.

Q. You said that you received these bonds either from people you knew or from people you didn't know and they had the approval of an officer. After you cashed the bonds tell us what you did with them. A. After I cashed the bonds?

Q. Yes. What was your practice as to what you did with the bond or bonds after you cashed them? A. Well, sometime during the day I would enter it in the bond register book, get all the information directly from the bond itself.

Q. You would enter it in the what? In the bond register? A. In the bond register book, yes.

Q. Now, is that a register made up of sheets, (567) which I think you have identified as Exhibits 13 and 14, I think, to 17 or 18?

(Mr. Hallinan hands to Mr. Rosenblum.)

Q. Take the top one, which is 13 in evidence. I ask you to tell us whether some of the writing on that exhibit is in your handwriting. A. Yes, it is.

Q. Now, will you tell us, as you look across the top— A. I beg your pardon.

Q. As you look across the top will you tell us the entries that you made, when you made an entry, as you said before, in a bond register? A. I would put the date, the bond number.

Q. That you would either put by stamp or in handwriting? A. No, in handwriting.

Q. What is that? A. In handwriting.

Q. Never by stamp? A. All of this is in handwriting except the date stamp.

Q. I say the stamp, the stamp would be either (568) in handwriting or be stamped? A. No, I said the only thing that was stamped on this would be the date stamp. Everything else is in handwriting. The bond number would appear, the date of issue and the month and year of the bond.

Q. Before that you said you had a bond number? A. Yes.

Q. That was in handwriting? A. That is right.

Q. Then you had a date of issue? A. The date, the month and the year of issue of the bond.

Q. The month and the year? Keep your voice up, Miss Graef. A. The month and the year, yes.

Q. And then? A. The amount paid.

Q. And then? A. And the name of the person.

Q. The name of the person? A. The name on the bond.

Q. That is you then— A. The name appearing on the bond, yes.

Q. You listed the name of the owner? (569) A. The name of the owner, yes.

Q. Right? A. That is right.

Q. And then after you did that—may I summarize it by saying: Was the same practice followed in connection with all these others? A. That is right.

Q. Which are 14, 15, 16, 17 and 18? A. Yes.

Q. Right? A. That is right.

Q. Now, after you made the entry in the bond register, what did you then do with the bonds? A. What did I do with the bonds?

Q. Yes, please. A. Well, I kept them there and at the end of the day I ran them up on an adding machine.

Q. Yes? A. I also ran the bond redemption forms on the——

Q. The what? A. The bond redemption forms, I ran

them up on the adding machine, make sure that they both tallied, and that was to help me prove my cash at the end of the day.

Q. Then what did you do with the bonds? (570) A. Well, then they were sent down to the Federal Reserve Bank.

Q. No. Let us assume that a person came in, you knew the person, you cashed the bond, you made the entries that you have told us about. What did you do with the bond, firstly what did you do with the bond? A. It was kept in my cage until the end of the day.

Q. Was that in a drawer of your desk? A. No, it was kept on the top.

Q. On the top? A. That is right.

Q. What did you do with it at the end of the day? A. I just told you, I would have to use it to prove my cash.

Q. No. After you have done that, at the end of the day when you did all the things you told us about, including the proving out the amount that you paid out as against the amount of the bond which came in, what did you do with the bond? A. They would be sent down to the Federal Reserve Bank.

Q. Every day? A. It was my recollection that they were.

(571) Q. Every day? Do you have a definite recollection? A. That is the way I recall it.

Q. Tell us, how did they get down to the Federal Reserve? Who did you give them to? A. Well, they must have been placed in an envelope.

Q. You say they must have been placed. A. Yes, because I don't recall that too well.

Q. You don't recall placing them in an envelope? A. Well, I must have placed them in an envelope, but I don't recall that part of it.

Q. Well, for how many years had you been doing this? I think you said you were there two and a half years, the first six months you didn't do this kind of work but you

did do it for the next two years, is that right? A. That is right, yes; but there have been six years that I haven't done it.

Q. It is six years since you have done it. Do you recall, then, whether or not—you say you have no recollection. You knew they went into an envelope? A. That is right.

Q. Whether that was your function or not you are not sure of, is that right? (572) A. That is right.

Q. Well, who did you turn the bonds over to? We are at the point now where you are at the end of the day, you have done everything you have told us about; then you say you had the bonds on top of your desk? A. That is right.

Q. Who did you turn them over to each day? A. I can only tell you that the only thing I recall is placing them in an envelope and sent them to the Federal Reserve Bank. That is all I recall.

Q. Did you send them to the Federal Reserve? A. Well, I don't know.

Q. You said you only recall sending them—by that do you mean that you turned them over to someone with instructions to take them to the Federal Reserve Bank? A. I only recall placing them in an envelope to the Federal Reserve. What happened then I don't know.

Q. Were they mailed? A. No, they wouldn't have been mailed.

Q. Were they delivered? A. They must have been delivered.

Q. Well, do you know whether they were? A. No, I don't.

(573) Q. Did you make it a practice at the end of each day when you finished with your work to put these bonds into an envelope and then leave it on top of your desk when you walked out? A. No, I wouldn't have done that, but I can't tell you what I did because I don't recall.

Q. In connection with your work did you have a box which was put into the vault each night? A. Yes.

Q. And in that box you kept the cash which you used in connection with the cashing and other things that you needed currency for? A. That is right.

Q. See if you recall whether or not those bonds were put into that cash box and then put in the center of the vault each night until such time as they were all sent out to the Federal Reserve Bank A. Yes, that may have been.

Q. What is that? A. That may have been, that sounds about right.

Q. So that that would be the procedure, that is your best recollection, you think that may have been done? A. To the best of my recollection, yes.

(574) Q. All right. Now, tell me this: In connection with the redemption forms, the ones that you say, in the instances where you cashed a person's bond and you knew the person, it bore the signature of the owner of the bond, is that right? A. That is right.

Q. And in the instance where it was approved by someone else, did you receive a redemption form which also had the signature of the owner of the bond? A. Would you repeat the question, please?

Q. I say: The two kinds of cashing you say you used were where you knew the person and the person, you said, signed in your presence his name or her name upon the redemption form, is that right? A. That is right.

Q. And, in addition to that, you say in the instance where you didn't know the person personally, you would cash the bond when you received approval from an officer? A. Yes, sir.

Q. At that time did you also receive a redemption form? A. Oh, yes.

Q. And where it would say "Signature" that would (575) be the signature of the person that you compared on the bond? A. Yes.

Q. Is that right? A. That is right.

Q. Now, what did you do with the redemption forms

at the end of the day? You have told us about the bonds now. Now, tell us what you did with the redemption forms. A. They were used to help prove up the cash.

Q. They what? A. They were used to help prove up the cash at the end of the day. Then they would have been placed in the box and placed in the vault.

Q. That is, your best recollection would be that they went with the bonds which went into the vault? A. That is right, yes.

Mr. Rosenblum: I will have just one or two questions on this topic, your Honor, then I can stop, I think.

The Court: All right.

Q. Tell me, in connection with the redemption forms, would you send them also to the cage each night? A. Would I send them to the cage?

(576) Q. To be placed in the vault in the box that you had that you sent to the vault? A. Well, they became bank records, I don't know where they were kept.

Q. What did you do with them each day? A. I don't recall what I did with them.

Q. Do you recall whether or not you kept them together until a certain time in the month, like the end of the month? A. That may have been. I can't recall.

Q. You have no recollection as to that? A. No, other than to help me prove up my cash. That is as far as I recall.

Mr. Rosenblum: Shall I stop here, your Honor?

The Court: All right. We are going to be slow getting back from lunch today; we won't be able to resume until 2.30. Don't discuss the case. We will recess now until 2.30.

(Jury retired.)

The Court: All right, we will see you at 2.30.

(Adjourned to 2.30 o'clock p. m.)

(577)

AFTERNOON SESSION

(Jury in box.)

VIRGINIA GRAEF resumed.

Cross examination continued by Mr. Rosenblum:

Mr. Rosenblum: May I have Exhibits 13 to 18, please?

Q. Miss Graef, did you ever speak to Mr. Miller about the Chernoff bonds? A. No, I did not.

Q. Did you ever speak to Mr. Miller about anything? A. About anything?

Q. Yes. A. I don't believe I did, no.

Q. You don't believe you did; right? A. No.

Q. Tell me, did you know whether or not Mr. Mishel during the year and at Christmastime spread gratuities around to tellers and other employees of the bank?

Mr. Hallinan: I will object to this, if your Honor please.

The Court: Sustained.

Mr. Rosenblum: Exception.

(578) Q. Miss Graef, I show you Exhibit 13 in evidence and direct your attention to the fourth from the bottom line where the words "Nat Chernoff" appear. Do you see it here? A. Yes, I see it.

Q. It is under a column which is headed by certain words that you described—the purpose of which you described to us before? A. Yes.

Q. Will you tell us just what that means when you have the words "Nat Chernoff"? A. That was the name appearing on the bond.

Q. In other words, you recorded the name of the person that appeared on the bond at the time you made up these redemption forms? A. That's right.

Q. Was it carefully done? A. That's right, the name appearing on the bond.

Q. Do you realize the importance of having your records conform with the bond records?

Mr. Hallinan: I will object to this question, your Honor.

The Court: Sustained.

Q. Did you make them conform? (579) A. The name on the bond, that is what was entered there. The name appearing on the bond.

Q. Can you tell us whether or not when you said before that you checked at the end of a day the bond register and the redemption forms—do you remember that? A. What do you mean I checked the bond——

Q. Did you use the redemption form at the end of the day— A. To prove up cash, not to enter in the bond register.

Q. Cash, the amount that you gave out? A. Yes.

Q. And those redemption forms would show in the cases where you made cashings the name of the person to whom you gave the money; is that right? A. Yes.

Q. In other words, you paid the money to the person whose name appeared on the redemption form who had to be the same person that appeared on the bond?

Mr. Hallinan: I will object to this, your Honor.

The Court: I will sustain the objection.

Q. Will you tell us whether or not the name of (580) the person that appeared on the redemption form, in those cases where you cashed bonds, was the person to whom you gave the money?

The Court: You say "in those cases where you cashed the bonds."

Are you trying to differentiate those she knew from the others?

Mr. Rosenblum: Yes.

Q. Where you say you knew a person to be a particular person, you cashed his or her bond; is that right? A. Yes.

Q. In those instances, that person that you knew would be the person to whom you gave a redemption form to fill out? A. Yes.

Q. And that person's name would be the person who was the owner of the bond? A. Yes.

(581) Q. Then you made the entry in the bond register to show the name of the person who was the owner of the bond? A. Not from the bond redemption form, I didn't make it from that; I made it from the bond itself.

Q. From the bond itself? A. That is right, yes.

Q. Then you recorded from the bond itself? A. I took everything from the bond, the number, the date, everything directly from the bond.

Q. And in these instances where you knew the person yourself— A. Yes.

Q. —you say that you gave the money to that person whose name appeared on the bond as known to you? A. Yes.

Q. And the redemption form carried the name of the person?

Mr. Hallinan: May I——

Q. Is that right? A. Yes.

Mr. Hallinan: May we have the answer—I hate to do this, but may we approach the bench, ever so briefly?

(582) The Court: Yes. I don't want any confusion.

(The following proceedings took place at the bench out of the hearing of the jury.)

Mr. Hallinan: Before, when I requested that the matter as to the procedure followed with respect to bonds where the person had an account at the bank, I requested that that matter wasn't part of the direct.

The Court: All right.

Mr. Hallinan: I did that for this specific purpose, which I think is now coming very sharply into focus. Mr. Rosenblum has in his hands and has just interrogated the witness with respect to the bond register which we have offered in evidence, and all of those as they related to the evidence in this case relate to a case where the person did not have an account.

The Court: Yes. If you want to limit it to that I am now ready to do so.

Mr. Hallinan: I do, yes. I make that request.

The Court: I will so limit it.

Mr. Rosenblum: I am trying to show the practice.

(583) The Court: The practice with respect to the people she knew I think you have explored as far as it has any value in this case.

Mr. Rosenblum: May I continue? It is a proper problem. I wasn't doing it for the other purpose. I showed a practice——

The Court: Go ahead. What else do you want? I didn't mean to cut you off. But at this point, unless you have good reason to persuade me to a different conclusion, I am not going any further as to her practice with respect to people whom she knew. In other words, the inquiries which you have been pursuing about persons known to her as depositors, I think you have gone into that as far as it has——

Mr. Rosenblum: May I continue a little further and you will see the purpose?

The Court: No, unless you want to tell me what it is.

Mr. Rosenblum: Yes, I will tell you what it is. Where she says the names conform, as she has indicated, they don't.

The Court: What has that got to do with it? He says that the accounts where she didn't——

Mr. Rosenblum: The claim of the Government (584) here is that it must be paid to the owner.

The Court: No, it is not.

Mr. Rosenblum: Yes, because you have here, they talk about Blanche, they talk about David, as to whether or not the money was paid to a person other than those two.

The Court: They haven't made any such claim here. There is no such claim in this case.

Mr. Rosenblum: I mean in the opening.

The Court: That you can't pay to an authorized agent.

Mr. Rosenblum: That is what they say. It could be paid to an authorized agent——

The Court: You say they have made such a claim. I don't recall that they have.

Mr. Rosenblum: They pointed out accounts in

the names of certain persons and they pointed out that the moneys weren't paid to these persons. That is practically the opening statement. Covering the bonds in the Nat Chernoff case.

The Court: I don't recall that. But you don't move me from my position. There is no profit in pursuing it further. The situation as to accounts where she, because of her own knowledge of the depositor, (585) did anything, I don't see has any relevancy or any materiality which justifies any more time on it than we have already spent.

Mr. Rosenblum: I think if it is the practice which was in vogue at that time, in other words, if the practice, if it is agreed by the Government that the practice is such, and they agree, that you may pay money to another person, say in the immediate family, if that is the Government's position, then I wouldn't press it.

The Court: If there is any position on that, it is a matter of your defense; that is not cross-examination of this witness. She hasn't given anything on direct on that.

Mr. Rosenblum: She has given the practice that has been followed.

The Court: I think I have made my position clear. I am not going any further on this subject as to accounts which she did anything with because she knew the depositors. I will sustain the objection.

Mr. Rosenblum: Would you stop me from asking her whether on occasion she paid money to people other than the owner of the bond?

Mr. Hallinan: We confuse the two issues. (586) That is why I objected and pressed my objection. This area is very confusing, unless, if

he wants, to call her back at the proper time and go into it.

The Court: I was going to say that to me has nothing to do with her direct examination. She has given no statement, general or otherwise, on the subject.

Mr. Rosenblum: She has given the general statement. She stated that the moneys were paid, the practice was for her to pay money to the persons who were the owners of the bonds as appeared from the names on the bonds.

The Court: I don't recall any such generalization. If she did, I would rather guess that it would be on cross. So I will sustain the objection at this time. When you come to put in your own defense we can canvass the problem then.

Mr. Rosenblum: Exception.

(The following proceedings were held in the hearing of the jury.)

By Mr. Rosenblum:

Q. This morning I tried to recall the name of another type of bond. Now I ask you, did you also cash bonds known as Armed Forces Leave Bonds?

(587) Mr. Hallinan: I object to this and any other inquiry along this line, your Honor.

The Court: I sustain the objection.

Mr. Rosenblum: Exception.

I have no further questions.

The Court: All right. Anything else?

Mr. Hallinan: No questions.

The Court: All right. Thank you.

(Witness excused.)

Mr. Hallinan: Mr. Horan.

FRANCIS HORAN, JR., called as a witness on behalf of the Government, being duly sworn, testified as follows:

Direct examination by Mr. Hallinan:

Q. Mr. Horan, by whom are you employed right now? A. The Lafayette National Bank of Brooklyn.

Q. Keep your voice up good and loud so that we can all hear you.

And in what capacity are you employed there? A. Supervisor of loan and discount.

Q. How long have you been employed there? A. Since June 1951.

Q. Where were you employed prior to that time? (588) A. Bensonhurst National Bank.

Q. In what capacity? A. Loan and discount clerk.

Q. How long were you employed there? A. From May 1950 to June 1951.

Q. Where were you employed prior to that time? A. Pennsylvania Exchange Bank.

Q. What period of time were you employed at the Pennsylvania Exchange Bank? A. From February 1949 to April 1950.

Mr. Rosenblum: May I have that date again?
Mr. Hallinan: February 1949 to April 1950.

Q. Now you have to keep your voice up? A. Yes.

Q. In what capacity were you employed at the Pennsylvania Exchange Bank? A. As a paying and receiving teller.

Q. Would you describe briefly, please, for the Court and jury what your duties were there? A. My duties were to accept deposits and cash checks.

Q. Now while you were employed at the Pennsylvania

Exchange Bank, who was the president of that bank? A. Mr. James Miller.

(589) Q. Do you see Mr. Miller in court? A. Yes.

Q. Would you point him out for us, please? A. On the end, the gentleman on the end.

Mr. Hallinan: May the record indicate that the witness has identified the defendant.

Q. Now while you were employed at the Pennsylvania Exchange Bank during the period you have outlined for us, was there a definite procedure to be followed at the bank with respect to the cashing of United States Savings Bonds where the person was not known to you and where the person had no account at the bank? A. Yes.

Q. What was that procedure? A. The procedure was to refer the person to an officer of the bank for authorization to cash the bond, as we had no authorization to cash bonds for persons unknown to us as customers. (590) The officer of the bank would then put his authorization either on the redemption tickets or on the bond and return the person to us.

Q. And then how would you process the bond after that? A. The matured value of the bond would be figured from the chart, the person would either be given cash or a check, and the bond would be placed in the cash drawer and the redemption ticket become part of the bank's records.

Q. At the time you were at the bank—would you turn to Government's Exhibit 12, which is right behind you, and, if you can recall—I will give you a pencil—draw approximately on that diagram where you were ordinarily located at the bank. A. (Witness writes.)

Q. Would you put the initials "F. H.," your own initials, next to that? A. (Witness writes.)

Q. Do you recall a teller by the name of Virginia Graef? A. I do.

Q. Will you indicate on that chart where she was located? (591) A. right here (indicating and writing).

Q. Did you from time to time fill in for Miss Graef? A. I did.

Q. And when you would fill in her for, would you fill in for her at her cage? A. Yes.

Q. From that cage can you indicate where Mr. Miller's desk was located? A. Approximately here (indicating and writing).

Q. Would you indicate it again, please? A. Approximately right here (indicating).

Q. Indicating the square with "Miller" written in it? A. Yes.

Q. Did you just place that "X" where the "X" is? A. Yes, I did.

Q. From where Miss Graef's cage was could you see Mr. Miller's desk? A. Yes, I could.

Q. Were there any obstacles in between the tellers' cages and the place where Mr. Miller was located that would obstruct your vision? A. No, no.

(592) Q. Are you familiar with a person by the name of Irving Mishel? A. Yes.

Q. How are you familiar with him? A. As a customer of the bank.

Q. Did you have occasion sometime in January of 1950 to fill in for Miss Graef at her window? A. Yes, I did.

Q. Did you have occasion during that time to cash bonds registered in the name of Chernoff? A. Yes, I did.

Q. Do you recall what date that was? A. January 19.

Q. What year? A. 1949.

Q. 1949? A. 1950. January 19, 1950.

Q. Do you know who was what was called the regular bond teller at the bank at that time? A. Miss Graef.

Francis Heran, Jr.—for Government—Direct

Q. Will you tell the Court and jury everything that you recall about the cashing of the Chernoff bonds on January 19, 1950, and you will really have to keep your voice up now. (593) A. It was sometime in the morning Mr. Kennedy came to me with a stack of bonds and told me——

Mr. Rosenblum: I object to anything said by Mr. Kennedy unless it appears to be in the presence of the defendant.

The Court: I will overrule the objection.

Mr. Rosenblum: Exception.

Q. Would you start again, please? A. Sometime in the morning Mr. Kennedy brought me a stack of bonds and told me to cash them, whereupon I asked him where he got the bonds. He said, "Mr. Miller sent them over."

I told Mr. Kennedy that I didn't know the person inscribed on the bonds as owner and would he please get authorization from Mr. Miller in the form of an initial to allow me to do this. He took the bonds, returned to Mr. Miller. He came back again with the bonds and, in his words, he told me that Mr. Miller said for me to mind my own God damn business and do as I was told.

I said, "I am sorry. I don't have authorization to cash these bonds."

He took them back again, whereas Mr. Mishel was sitting at the desk with Mr. Miller he got up and left. Sometime afterward Mr. Mishel returned, the bonds were (594) sent over to me again, at which time there was a bond redemption ticket accompanying the bonds. The ticket had been initialed on the back. I cashed the bonds, sent the money back with Mr. Kennedy, Mr. Mishel got up and left.

Q. Did you see Mr. Mishel leave the bank? A. Yes.

Q. Was Mr. Mishel alone when he left the bank? A. He was alone.

Q. What did you do thereafter? A. I placed the bonds in the cash drawer and the bond redemption ticket with the others in Miss Graef's desk. Then I went to lunch.

On returning from lunch Mr. Kennedy had a conversation with me, and I looked for the redemption ticket. It was no longer there.

Q. I show you Government's Exhibit 3A in evidence, which is a bond redemption form dated January 19, 1950. I ask you to look at that very carefully and tell us whether or not that is the redemption form that you received on the date that you have just testified to. A. No.

Q. As you recall, what is different? A. The difference is that there were bond numbers (595) listed on the back and an initial.

Q. What was the initial? A. "J. M."

Q. Whose initial was that? A. Mr. Miller's.

Q. And that redemption form you hold in your hand has not those notations? A. No.

Q. Is this the redemption form that you received on that day? A. No.

Q. I show you Government's Exhibit 3 in evidence and ask you if these are the bonds that you cashed on January 19, 1950. A. Yes, they are.

Q. What notations did you place upon those bonds? A. I placed the redemption stamp and my initial, in some cases the last name.

Q. What do you mean by "redemption stamp"? A. The stamp that appears on the bond saying, "Paid" and the amount "Each bond is received for", the date, the name of the bank and a place for my initial.

Q. And then you placed your initial on each bond, or name?

(596) Q. While you were at the Pennsylvania Exchange Bank, Mr. Horan, was anyone ever introduced to you as Nat Chernoff? A. No.

Francis Horan, Jr.—for Government—Direct

Q. In particular, did Irving Mishel ever introduce anyone to you as Nat Chernoff? A. No, he did not.

Q. Do you recall what form the redemption forms came in while you were at the bank? A. They came in pad form.

Q. Do you recall where those pads were kept? A. Well, the current supply was kept in Miss Graef's desk, and the rest of the supply was kept in our supply room on the balcony.

Q. Did you ever give a pad full of redemption forms to Irving Mishel? A. No.

Q. Did you ever give a pad full of redemption forms to anyone? A. No.

Q. Did Mr. Miller, as president of the bank, have access to the pads of redemption forms? A. Yes.

Q. Did he have access to the bond register at the bank? (597) A. Yes.

Q. Did he have access to the bonds themselves before they went to the Federal Reserve Bank for collection? A. Yes.

Q. Now, from the date January 19, 1950, up to and including this moment has Mr. Miller ever discussed with you the cashing of the Chernoff bonds that you handled? A. No.

Q. Has anyone at the bank on Mr. Miller's behalf or stating that it was on Mr. Miller's behalf ever discussed the cashing of the Chernoff bonds with you within the same period of time I outlined in my last question? A. No, they did not.

Q. Did anyone from the law firm of Dorf & Levy ever discuss with you the cashing of the Chernoff bonds? A. No.

Q. And in particular I ask you did Mr. Dorf ever discuss it with you? A. No, he did not.

Q. Did Mr. Levy ever discuss it with you? A. No.

(598) Q. Did a man by the name of Weiss ever discuss it with you? A. No.

Q. I show you Government's Exhibit 9 in evidence and I ask you if you have ever seen the individual represented in that photograph before. A. Yes, I have.

Q. Where did you see him? A. In the bank.

Q. Would you keep your voice up now? A. In the bank.

Q. In what bank? A. The Pennsylvania Exchange Bank.

Q. How often did you see him in there during the period of time that you were employed from February, 1949, to April, 1950? A. Frequently.

Q. Did you ever see him in the company of Irving Mishel? A. Yes.

Q. Did you ever see him in the bank alone? A. Yes.

Q. Did you ever see that individual and Mishel (599) talking with Mr Miller? A. Yes.

Q. Did you ever see that individual represented in that photograph talking with Mr. Miller alone? A. Yes.

Q. And all of those previous questions, the last few, have reference to at the bank. A. Yes.

Mr. Hallinan: You may inquire.

Cross-examination by Mr. Rosenblum:

Q. About how many separate tickets would you say there were in a pad full of redemption forms? A. I would say there were approximately fifty to a hundred.

Q. From fifty to a hundred? A. Yes.

Mr. Rosenblum: Will you give me the redemption forms, please?

Mr. Hallinan: Yes. Do you want all of them?

Mr. Rosenblum: Yes.

(Mr. Hallinan hands documents to Mr. Rosenblum.)

Francis Horan, Jr.—for Government—Cross

Q. I show you Government's Exhibits 1A through 8A and ask you to look at the back and see whether they are or are not all in exactly the same condition. (600) A. They aren't all in the same condition.

Q. They are not all? A. No, they are not.

Q. Show me which one is not in the same condition. A. (Witness hands document to Mr. Rosenblum.)

Q. That is the one of February 15. How about the others? A. They are in different condition than that one.

Q. Do you know whether they are all in the same condition as 3A?

Mr. Hallinan: I am going to object to the form of the question, your Honor, "condition."

Q. That is, without anything on the back. Is that right? A. That's right.

Q. In connection with this one, 7A, can you tell us whether that is Mr. Graef's handwriting?

Mr. Hallinan: I am going to object to questions on 1A, 2A—I have no objection to 3A. That is the one he has looked at—and then 4A through 8A.

The Court: I will let him answer this question. Go ahead.

Q. Look on the back and tell us whether or not that is in the handwriting of Miss Graef. (601) A. I really couldn't say if it was her handwriting or not.

Q. Wasn't it the practice, Mr. Horan, that in those instances where you filled in for Miss Graef, that after you cashed bonds you left the bonds and you left the form on her desk so that she completed the entries? A.

If I worked from her cash, yes. If I did it myself, I would fill it in myself.

Q. And on the days when she was out, you filled in for her on some occasions? A. That's true.

Q. On those occasions do you say that you did or you did not fill in the backs where you cashed bonds? A. If I cashed the bonds from my cash and later sold her the cash, I would fill in the backs. If she was there at the time and I cashed them and gave them to her during the day, she would fill in the backs. My duties were such it didn't permit me the time to do those extra things if she was there.

Q. Can you tell us whether or not the pads to which you said Mr. Miller had access were also available to other officers?

Mr. Hallinan: I am going to object to this, (602) your Honor.

The Court: I will let him pursue it. Go ahead.

A. Any officer of the bank had access to the pads.

Q. And how about the bond register? A. Any officer of the bank would have access to the bond register.

Q. And how about the bond redemption forms? A. Any officer of the bank would have access to them.

Q. It would be the same? A. That's true.

Q. When for the first time did you see Mr. Mishel? A. The first week I worked for the bank he made a deposit and he made it a point to speak to two or three of the tellers there, which I was one. That is the first time I remember seeing Mr. Mishel.

Q. He made it a point to speak to two or three of the tellers? A. That's right.

Mr. Hallinan: That is what the witness said, and I will object to any further questions along

this line. I think this is an area where he makes him——

The Court: I will allow it.

Q. About how long? Did you say it was a conference (603) or a talk between four people? A. No.

Mr. Hallinan: He did not say it was a conference. I will object to the form of that question.

Mr. Rosenblum: I will change it.

Q. You said that was the first occasion when you talked with Mr. Mishel? A. I didn't say I talked with him.

Q. He talked with you and the others? A. No. I was introduced to him.

Q. Who introduced you?

Mr. Hallinan: I will object to this.

The Court: I will let it go. Go ahead.

A. One of the tellers. It is a common procedure to introduce a new teller to the customers at the window. I was a new teller.

Q. Was that Mr. Littlefield? A. It may have been. I am not sure.

Q. Was it Mr. Lucey? A. No.

Mr. Hallinan: I will object to this, if your Honor please.

The Court: I will let it go.

(604) Q. After that did you see Mr. Mishel—can you fix the time, approximately, when you say you saw Mr. Mishel for the first time? A. No, I can't fix the time.

Q. I do not mean time of day. Approximately the period of the year or the month. A. Well, I started with them in February.

Q. 194— A. 9.

Q. 1949? A. Yes. Therefore, it was in February, 1949.

Q. You would say it was in or about the month of February, 1949; is that right? A. That's right.

Q. Thereafter, did you see Mr. Mishel quite often? A. Frequently, yes.

Q. Were there any occasions when you received fight tickets from Mr. Mishel?

Mr. Hallinan: I will object to this, if the Court please.

The Court: Overruled. I will take it.

A. No.

Q. Did you receive any tickets from him? (605) A. No, I did not.

Q. Did you receive any gratuities from him?

Mr. Hallinan: I will object to this, your Honor.

The Court: I will let him ask this witness if he did. Overruled.

A. No, I did not.

Q. Do you recall whether or not on the day when you cashed the bonds that you identified today your account was short by a hundred dollars?

Mr. Hallinan: I will object to this, your Honor.

A. I do not recall.

The Court: I will let him answer. Let the answer stand.

A. I do not recall.

Q. Do you recall whether that was brought to your attention by someone at the bank, about your shortages?

Mr. Hallinan: I will object to this, your Honor.

The Court: Overruled.

A. I do not recall.

Q. Do you recall whether or not you had a whole series of shortages while you were at the bank? (606) A. I had a few shortages while I was at the bank, yes, which was, in my estimation, not uncommon.

Q. And you don't recall whether it amounted to as much as a hundred dollars on the day when you cashed those bonds? A. No, I don't.

Mr. Hallinan: Your Honor, may I approach the bench briefly?

The Court: Sure.

(The following proceedings took place at the bench, not in the hearing of the jury):

Mr. Hallinan: I hope the Court does not feel I am just beginning to carp, but I am getting fed up with the procedure of Mr. Rosenblum and Mr. Perry in leafing through and making remarks which I can hear and which I am sure the jury can hear. It may be unintentional. If they have papers to go through, let them confer at the proper place.

The Court: Be very careful about that.

Mr. Rosenblum: I did not realize that.

Mr. Hallinan: They are constantly going through papers right there in front of the jury.

The Court: I just caution you to be very careful about that.

Mr. Rosenblum: I will.

(607) (The following proceedings were held in the presence of the jury.)

By Mr. Rosenblum:

Q. Do you recall whether any officer of the bank re-

peatedly talked with you about the shortages? A. Repeatedly talked to me? No.

Q. Yes. A. No.

The Court: I caution the jury again that the only testimony you have is what the witness says and not any suggestions or facts incorporated in any question.

Q. Do you know Mr. Brennan? A. Pardon me?

Q. Do you know Mr. Brennan? A. Yes, I know Mr. Brennan.

Q. Do you recall whether he had any talk? Was he manager of the bank? A. At one time, yes, he spoke to me; he was manager of the bank.

Q. About your shortages? A. That is right.

Q. On the occasion that you describe when you say the guard Kennedy brought to you the bonds that you identify, up to the time he brought the bonds to you, (608) I mean up to that time, did you know who was or who wasn't at Mr. Miller's desk? A. No, no. In fact, I didn't notice until the second time I sent them back, I had to send them back, when I looked up to see who was there, I saw Mr. Mishel sitting at the desk with Mr. Miller.

Q. You say in the first place you asked for a redemption form? A. That is correct, initialed.

Q. Was there one brought over without initials? A. The first time none came over.

Q. None came over at all? A. That is true, yes.

Q. You said what? A. Just the bonds the first time.

Q. Just the bonds? A. That is right, that is all that was given me the first time he came.

Q. So that you then asked for the form, redemption form? A. That is correct.

Q. And you say at the time, after you returned it to Mr. Miller, that Mr. Mishel then left the bank? A. No, no, I returned them to Mr. Miller.

(609) Q. Through Mr. Kennedy? A. Through Mr. Kennedy, whereon they were immediately returned to me the second time through Mr. Kennedy. I again told Mr. Kennedy——

Q. Without the-- A. Within the initial or anything. Again I told Mr. Kennedy I had no authorization to cash any bonds for someone unknown to me, please take them back. He took them back. And then is when Mr. Mishel got up and left.

Q. Did you know whether or not by that time some redemption forms had been sent over to a teller with bonds in the name of Chernoff? A. No, I did not.

Q. You didn't know it at the time? A. I didn't know it.

Q. Is that right? A. That is right.

Q. You say the cashing that you referred to was on— A. January 19th.

Q. January 19th. From an examination of the records which you had, like the redemption forms, did you learn that there were two cashings before yours?

Mr. Hallinan: I object to this, your Honor.

(610) A. No.

The Court: He has answered.

A. No, I didn't.

Q. Up to this moment you didn't know whether there were any prior cashings? A. No—yes, I have heard in the past month or so that there have been some, but I didn't know there were any prior cashings to mine.

Q. Who did you hear that from? A. Well, I asked Mr. Lucey when I met him down here one time. He told me that he had cashed some and Virginia Graef told me she had cashed some. I didn't——

Q. That was prior to the time— A. I didn't know the sequence in which they were cashed, who handled what.

Q. Have you since learned— A. Pardon me?

Q. —that prior to the time that the cashing took place that you told us about that there were two other cashings on redemption forms?

Mr. Hallinan: I object to the question on the grounds of irrelevancy, your Honor.

The Court: I will allow the answer.

A. I don't know the exact times that the other (611) cashings took place.

Q. Did you know that they were before yours? A. I still don't know if it was before or after. I never bothered to ask exactly what time, that is, as far as the date goes they were handled.

Q. Did you look at the redemption register—at the bond register at the time of this occasion? A. No, there was no reason to.

Q. You hadn't looked at it? A. No.

Q. Whether there was a reason or not? A. No.

Q. I just wanted to know did you look at it? A. No.

Q. You say you are positive that in the first instance when the bonds came in there was no redemption form— A. That I am positive of.

Q. —along with it? A. Yes.

Q. Did you on any occasion while you were with the Pennsylvania Exchange Bank—were you ever asked by Mr. Miller or any other officer to cash a bond without a redemption form? A. Was I ever asked to do it?

(612) Q. Yes. A. No, I was never asked to do it before.

Q. Did you know whether or not it was the practice at the bank in making their records that a redemption form had to be available in order to check on the cash at the end of the day? A. That isn't the reason for the redemption form.

Q. Isn't that one of the reasons? A. Pardon me?

Q. Isn't that one of the reasons? A. No.

Q. Do you know whether Miss Graef used the redemption form in checking out her balance for the day? A. She may have had her own system. But that isn't—it has nothing to do with the cash, a redemption form. That is just a bank record, that is all.

Q. And it was a bank record which, in this case, when you received the redemption form had the same name on as appeared on the bond, is that not right? A. When it eventually came, yes.

Q. And you say that you then left that redemption form together with the bond— (613) A. No.

Q. What did you do with the redemption form? A. Then I put the bond in the cash drawer; the redemption form was placed with the others that Miss Graef had in her desk.

Q. Was the desk open? A. Her desk was open, sure. She wasn't in that day.

Q. You found other redemption forms in her desk on the occasion when you put this one in? A. That is true.

Q. Then you say that you put the bond where? A. In the cash drawer.

Q. Hers or yours? A. She wasn't in that day. It was my cash drawer.

Q. I mean her cash drawer would be closed if she wasn't in, is that what you mean? A. Her cash would be locked in the vault, her cash wouldn't be brought out for that day.

Q. You had a drawer the same as the other tellers in which you had this cash and at the end of the day it would go into the vault for the night? A. The cash is removed from the drawer and put (614) into the vault.

Q. Then you say that the bond itself was put into the— A. Cash drawer.

Francis Horan, Jr.—for Government—Cross

Q. Cash drawer, which at night went into the vault? A. That is correct.

Q. The redemption forms didn't go into the vault? A. No.

Q. Is that right? A. That is right.

Q. Have you ever seen me before? A. Yes.

Q. Do you remember when that was? A. About a little over a year ago.

Q. Do you recall where that was? A. The Lafayette National Bank, at 1273 Fulton Street.

Q. That was after the banking hours, that is, the closing? A. That is right, after three o'clock.

Q. After three o'clock. Do you recall whether on that occasion I was accompanied by Mr. Perry? A. I believe you were, yes.

Q. Do you recall whether at that time I asked (615) you to tell us all that occurred on the day of the cashing of the Chernoff bonds, the one you took care of? A. I don't recall that you asked me that, but——

Q. Do you recall my asking you to tell us what took place? A. Yes, yes.

Q. Did you mention seeing a man whose picture you have just identified at all? A. Yes.

Q. You did mention it? A. I think I did, because before that, in the U. S. Attorney's office, about two and a half years ago, possibly three years ago, I was shown the same picture and asked that, if I had seen him in the bank, and I had affirmed it. If you asked me if I saw Mr. Rosenberg in the bank I would have told you yes.

Q. If I had asked you? A. If you had asked me. I don't remember whether you asked me that or not.

Q. Do you recall whether I asked you or whether you then suggested it to me? A. I don't remember whether you asked me or not (616) or whether I suggested it to you.

Francis Horan, Jr.—for Government—Cross

Q. When did you last see Mr. Mishel? A. At the grand jury in this same building some time ago. Offhand I haven't got the fact correlated, or the time correlated, but probably about two and a half or three years ago.

Q. Do you recall whether you and he were seated in anteroom together? A. Not alone.

Q. Do you recall discussing some things with him on that occasion? A. No, no.

Q. You didn't talk to him at all? A. No. When we entered the room, I entered with two other people. He arose. He was with another gentleman; at the time I didn't know the gentleman was a marshal, United States Marshal. He arose and was—and the marshal told him to sit down again. He immediately said, "Hello," to all of us, tried to be very friendly, but the marshal would not allow him to fraternize with us in any way.

Q. When you say Mr. Mishel left the bank after Kennedy, you say, brought back the bond to him, will you tell us about how long after that time, (617) when he left, that he returned to the bank? A. Possibly a half an hour to 45 minutes.

Q. Do you recall that? A. Well, I do, because of the fact that after completing the transaction I went to lunch, and therefore it was between 9 and 11 or 11:30 that the whole matter took place.

Q. Do you know a man by the name of Schnabel?

Mr. Hallinan: I object to this, if your Honor please.

The Court: All right. I sustain the objection.

Mr. Rosenblum: Exception.

Q. Do you know a man by the name of Sam Siegel?

Mr. Hallinan: I object to this, if your Honor please.

The Court: Sustained.

Q. Can you tell us whether or not during the period of time that you saw Mr. Mishel at the bank, did you see him with persons other than the person whose picture you identified?

Mr. Hallinan: I object to this; it is the same two questions previously stated rolled into one now.

(618) The Court: I will allow the answer.

A. Yes, I saw him with other people besides——

Q. What is that? A. I had seen him with other people besides the one in the picture.

Q. Can you tell us during what period of time you saw him with other people? A. Any time from—it could be any day of the week, from Monday through Friday, any time during the year. The man certainly knew people other than the one in the picture.

Q. I mean people that you saw with Mr. Mishel. A. Yes, that is what I am referring to.

Q. Is that right? A. That is right.

Q. Did you know of the relationship of these other people and Mr. Mishel? A. No.

Q. Did you know of the relationship between this man and Mr. Mishel, the one whose picture you identified? A. No.

Q. About when would you say this man for the first time?

The Court: Which man are you talking about

(619) now?

Q. The man whose picture you identified. A. I couldn't honestly say for the first time.

Q. Well, can you give us an approximate date when you saw him? A. I would say it wasn't too long after I started

there, because he would come in to make deposits for Mr. Mishel. That is one relationship I could connect him with Mr. Mishel.

Q. So that on the occasions you saw him, he brought money to deposit, whether it be checks or cash, to the tellers' desks, where you were one of the tellers? A. I had also seen him in with Mr. Mishel.

Q. You saw him with Mr. Mishel? A. That is right. Been in the bank with Mr. Mishel.

Q. Do you remember about how many times you saw him? A. Say frequently.

Q. What would you say is frequently? A. I never counted the times. I could just say frequently. I remember seeing him with Mr. Mishel, and it wasn't unusual. I didn't count the times (620) that I saw him.

Q. You say you left the employ of the Pennsylvania Exchange Bank about when? Just a moment.

(Mr. Rosenblum conferred with Mr. Perry at the defense counsel table off the record.)

Q. Did you ever have any discussion with Mr. Miller about this subject matter you discussed? A. None.

Q. That you have testified to? A. No.

Q. Never? A. Never.

Q. Do you know whether or not over the period of 14 months your shortages amounted to about $700? A. No, I didn't know that.

Q. Do you know whether or not Mr. Brennan told you to resign or you would be fired? A. No. I asked Mr. Brennan, I told him I realized that I was having a lot of hard luck as far as working over the window goes. What did he feel?

Q. You were having what? A. I was having a lot of hard luck over the window. And he said, that, whatever I wanted to do. I told him I was going to resign. And he said, "Well, that's all right." I felt that I should.

Francis Horan, Jr.—for Government—Cross

(621) Q. What was the reason that you felt you should? A. I just felt that I should, that it wasn't doing me any good to work there. I couldn't work right in the place. Everything I did I would wind up with a $5 shortage or a $10 shortage.

Q. Or a $150 shortage, a $100 shortage? A. It could have been that much; I don't recall.

Q. You wouldn't say it wasn't? A. Pardon me?

Q. You wouldn't say it wasn't? A. No, I wouldn't say it wasn't.

Q. Haven't you in fact been blaming Mr. Miller for your resigning— A. Pardon me?

Q. Haven't you been blaming Mr. Miller for your leaving the bank in the way you described to us? A. Well, I felt that it had a lot to do with it.

Q. You say after you talked with Brennan you resigned? A. That is right.

Q. Were you required to make good on the shortages? A. No. They ran an over and short account.

(622) Q. What is that? A. They ran an over and short account in the general ledger.

Mr. Rosenblum: No further questions.

Mr. Hallinan: Just a few brief questions.

Redirect examination by Mr. Hallinan:

Q. When did you leave the Pennsylvania Exchange Bank? A. In April 1950.

Q. And have you from that time until the present moment continuously been employed by other banks? A. Yes.

Mr. Hallinan: That is all.

(Witness excused.)

JAMES J. LUCEY, JR., called as a witness on behalf of the Government, being duly sworn, testified as follows:

Direct examination by Mr. Hallinan:

Q. Mr. Lucey, by whom are you employed? A. The Pennsylvania Exchange Bank.

Q. In what capacity? A. Manager.

Q. Of what branch? (623) A. 38th Street office.

Q. Now how long have you been employed by the Pennsylvania Exchange Bank? A. Since February 1949.

Q. How were you employed during the year 1950 at that bank? A. I was in the loan and discount department, 48th Street office.

Mr. Rosenblum: Would that be 1949 or 1939?

Mr. Hallinan: 1949.

Q. While you were at the Pennsylvania Exchange Bank in 1950, who was president of that bank? A. James W. Miller.

Q. Would you point the defendant out, please? A. (Witness indicates.)

Mr. Hallinan: May the record indicate that the witness has identified the defendant.

Q. Now while you were employed at the Pennsylvania Exchange Bank during 1950 was there a definite procedure to be followed by the bank in the cashing of United States Savings Bonds where the person was not known at the bank and where the person had no account at the bank? A. Yes, there was.

(624) Q. Would you tell the Court and jury what that procedure was, please? A. In the event that the party cashing the bonds did not have an account there, the teller was not authorized to cash those bonds. The teller had

to refer them to an officer, and it was up to the officer to okay that transaction.

The customer or the party would then bring the bond back to the window and the teller would then cash it, providing it was initialed on the redemption form.

Q. After that, the bond would be processed, would it? A. The bond would be processed and the party would be given the money. It would be entered in the register and the party would be given the money.

Q. What would happen to the bond redemption form thereafter? A. It would become a part of the bank record.

Q. And will you show us, if you can, on Government's Exhibit 12 behind you where you were located in 1950? Were you at one of the teller's cages? A. The day I cashed the bond?

Q. Well, all right, let us start there. Where (625) were you the day you cashed the bonds? A. This cage here (indicating).

Q. Is that the one with the initial "V. G." and an "X"? A. That is right.

Q. With respect to that, where was Mr. Miller's desk located? A. (Witness indicates.)

Q. Indicating X and the square, not quite a square, but almost, where "Miller" is written in.

Could you see Mr. Miller's desk from that spot you have indicated, where Miss Graef's cage was? A. Yes, I could.

Q. Are you familiar with a person by the name of Irving Mishel? A. Yes.

Q. How are you familiar with him? A. He was a customer in the bank.

Q. Now sometime in February 1950 did you have occasion to fill in for Miss Graef, the bond teller? A. Yes, I did.

Q. Do you recall on two occasions in 1950, in February

of that year, cashing bonds registered in the name of Chernoff? (626) A. Yes, I do.

Q. Do you recall when the first time was? A. February 15.

Q. 1950? A. 1950.

Q. Will you tell the Court and jury what happened on that day? A. Well, during the course of business that day Mr. Peter Kennedy, now deceased, who was the floor man, he came over to my window and said——

Mr. Rosenblum: Just a moment. I make the same objection, if your Honor please, as to any conversation by or with Peter Kennedy on the ground that Kennedy is dead and it violates the hearsay rule.

The Court: Overruled.

Q. Would you start again, please?

Mr. Rosenblum: Exception.

A. On that day Mr. Kennedy, the deceased, the floor man, came over to my window and told me to cash some bonds for the boss.

Q. Who was the boss? A. Referring to Mr. Miller. He said they were cashed before, there were some other bonds cashed before.

(626a) So I looked in the bond register and I noticed that there were bonds cashed in the name of Chernoff before.

So, as a memorandum for myself, as a notation of where these bonds came from, I put "JM" on the bond redemption slip and proceeded to cash these bonds.

I then gave the money to Kennedy, and he brought them over to Mr. Miller's desk, where Mr. Mishel and Mr. Miller were sitting.

(627) Q. Was anyone else at the desk with them? A. No, sir.

Q. Did you also cash bonds on February 20, 1950? A. Yes, sir.

Q. Will you tell us what happened on that day? A. On that day Mr. Kennedy came over and he presented a bond and he said, "Cash this for the boss."

Mr. Rosenblum: I make the same objection, if your Honor pleases.

The Court: Same ruling.

Mr. Rosenblum: Exception.

A. I recognized the name, so I proceeded to cash them in the usual way and give Mr. Kennedy the money, and he brought it back to Mr. Miller's desk, and Mishel was there.

The Court: I did not hear the end of that answer.

(Record read.)

Q. Was anyone else at Mr. Miller's desk besides Mr. Miller and Mr. Mishel at that time? A. No, sir.

Q. On both occasions what did you do with the bonds and redemption form when you had finished cashing the bonds? A. I put them in the teller's cash box.

Q. In whose teller's cash box? (628) A. In Miss Graef's.

Q. I show you Government's Exhibit 7 in evidence and ask you if these are the bonds that you cashed on February 15, 1950. A. Yes.

Q. I show you Government's Exhibit 8 for identification and ask you if— A. Yes.

Q. —that is the bond you cashed on February 20? A. Yes.

Q. I show you Government's Exhibit 7A and ask you if that is the redemption form on which you placed the initials "J. M." on— A. Yes.

Q. —February 15, 1950? A. (Witness nods.)

Q. Why did you place the initials on that bond redemption form? A. To show who had presented the bonds or who had sent them over.

Q. I show you Government's Exhibit 8A in evidence

and ask you if you placed the initials "J. M." on that redemption form. A. Yes, I did.

(629) Q. Why did you place them on that? A. For the same reason that I said before.

Q. Was anyone ever introduced to you at the bank as David Chernoff? A. No.

Q. Specifically, I ask you did Irving Mishel ever introduce anyone to you— A. No.

Q. —as David Chernoff? A. No.

Q. In that connection, is that the name on Government's Exhibit 8, David Chernoff? A. That's right.

Q. Just above where it says "Write signature"? A. Yes.

Q. Was this signed in your presence? A. No.

Q. Were those bonds that you looked at, Government's Exhibits 7 and 8, signed in your presence? A. No, sir.

Q. I show you Government's Exhibit 7A in evidence and ask you if anyone was ever introduced to you as Blanche Chernoff. A. No.

(630) Q. Do you know anyone by that name? A. No, sir.

Q. Did anyone on either of those days present themselves as either David or Blanche Chernoff? A. No, sir.

Q. On Government's Exhibit 8A in evidence the name Thomas Young is printed in ink above the printed notation right on the form itself, "Identification."

Was that signed in your presence? A. No.

Q. Was anyone presented to you as Thomas Young? A. No.

Q. Do you know anyone by the name of Thomas Young? A. No, sir.

Q. Did Mishel present anyone by the name of Thomas Young to you? A. No, sir.

Q. Do you recall, Mr. Lucey, about six months after you cashed the last bond in the Chernoff bonds having a conversation at the bank with Agent Sershen of the Secret Service? A. Yes, I do.

Q. I do not want the substance of the conversation, but about how long did you speak with him on that day? (631) A. About ten or twenty minutes, I guess.

Q. Did he interrogate you with respect to the cashing of the bonds that you cashed registered in the name of Chernoff? A. Yes, he did.

Q. Where did he go when he left you?

Mr. Rosenblum: I object to the last question—he is incorporating, in effect, the conversation—unless it was in the presence of the defendant.

Mr. Hallinan: I just want to get the subject matter.

The Court: I will overrule the objection.

Mr. Rosenblum: Exception.

Q. Where did he go when he left you? A. Mr. Miller's desk.

Q. How long did he stay there, if you recall? A. About ten minutes.

Q. Do you know where he went from there? A. After he left Mr. Miller's desk he left the bank.

Q. Thereafter, did you have a conversation with Mr. Miller? A. Yes. He called me over to his desk a couple minutes after he left and he asked me what he was talking about.

(632) Q. What who was talking about? A. What Mr. Sershen was talking about. I told him, "Those were the bonds that you sent over with Kennedy to cash the day that Mishel was there."

Q. What did Mr. Miller say? A. He said he didn't remember them.

Q. I have asked you abouf Blanche and David Chernoff. Was anyone ever introduced to you as Nat Chernoff?

Q. In particular did Irving Mishel ever introduce anyone to you as Nat Chernoff? A. No, sir.

Q. Do you recall what form the redemption forms came in? A. In pad form.

James J. Lucey, Jr.—for Government—Direct

Q. And where were these pads kept? A. Well, the tellers had a pad, and they are kept up in the stationery room.

Q. Did you ever give a pad full of these redemption forms to Mishel? A. No, sir.

Q. Did you ever give a pad full of these redemption forms to anyone? A. No, sir.

(633) Q. Apart from the conversation that you have testified to with Mr. Miller about the cashing of these bonds, did Mr. Miller discuss with you at any other time the matter of the cashing of the Chernoff bonds? A. No, sir.

Q. Did anyone at the bank on Mr. Miller's behalf discuss these matters with you? A. No, sir.

Q. Did anyone from the law firm of Dorf & Levy ever discuss the cashing of the Chernoff bonds with you? A. No, sir.

Q. Specifically, I ask you did Mr. Dorf discuss it with you? A. No, sir.

Q. Did Mr. Levy discuss it with you? A. No, sir.

Q. Did a man from their office by the name of Mr. Weiss ever discuss it with you? A. No, sir.

Q. While you were at the Pennsylvania Exchange Bank in 1949 and 1950, was there a definite procedure with respect to the mailing out of the bank of letters? A. Yes.

(634) Q. Would you tell the Court and jury what that procedure was, please? A. Well, one of the secretaries would gather the mail from the different departments, seal it and stamp it up, and the floorman would bring it over to the Rockefeller Plaza Post Office for mailing.

Q. And mail it there? A. Yes, sir.

Q. Is that post office right in the vicinity of the 48th Street Branch of the bank? A. It is across the street and down a flight of stairs.

Mr. Hallinan: You may inquire.

Cross-examination by Mr. Rosenblum:

Q. You cashed the last of the Chernoff bonds, didn't you? A. Whether it was the last, I don't know.

Q. That is, in point of time do you know whether the bonds which you cashed were the last ones cashed at the bank? A. No, I don't.

Q. You have no knowledge of it? A. (Witness shakes head.)

Q. Would you know whether or not on any occasion (635) prior to the time that you cashed these bonds, as to whether or not Mr. Mishel introduced a man by the name of Chernoff to Mr. Miller?

Mr. Hallinan: I will object to this, your Honor. I think this goes to a very important matter which I did not develop, and I would seriously request that this be restricted to another time.

The Court: I will let him answer.

(To witness) If you know of your own knowledge.

The Witness: Would you repeat the question?

The Court: Read the question back.

(Question read.)

A. No.

Q. You are saying cashing the bonds what you did was to check the bond register, and seeing there were bonds cashed in the name of Chernoff previously, you then cashed these after getting the bonds from Mr. Kennedy the way you have described?

Mr. Hallinan: I object to that as not including all the witness said that made his determination possible at that time.

The Court: Will you read the question back?

Mr. Hallinan: The objection is I object to the form of the question.

(636) (Question read.)

The Court: Well, I will sustain the objection as to form.

James J. Lucey, Jr.—for Government—Cross

Q. You say Mr. Kennedy came to you on the occasions you have described and said to you what you have testified; is that right? A. Yes, sir.

Q. And at that time he gave you on the first occasion a bond and a redemption form; is that right? A. Yes, sir.

Q. And you then checked the bond register and found that there were bonds in the name of Chernoff previously cashed? A. Yes, sir.

Q. And then you cashed these bonds? A. That's right.

Q. And you say that you put the initials "J. M." on it, that designating the source from which—that being to you the name of the person who sent the bonds through Mr. Kennedy? A. That's right.

Q. And the same applied to the next cashing; is that right? A. Yes, sir.

(637) Q. And are those redemption forms that you identified, the last two, 7 and 8——

Mr. Hallinan: 7A and 8A.

Q. —7A and 8A in exactly the same condition that they were in at the time you received them? A. Yes, sir.

Q. Excepting that you added the initials "J. M."? A. And I put the numbers on the back of one of them.

Q. And these redemption forms, all of the redemption forms, were available to Mr. Miller at all times? A. Yes.

Q. And you say that today these two redemption forms with the initials "J. M." on it are exactly in the same condition as the time they last left your hand? A. Yes.

Mr. Rosenblum: I have no further questions.

The Court: Anything else?

Mr. Hallinan: Just one more question.

Re-direct examination by Mr. Hallinan:

Q. When you put the initials "J. M." on, Mr. Rosenblum asked you did that indicate the source of the transaction. Did it also indicate the authority on which you relied to cash those bonds? (638) A. Yes.

Colloquy of Counsel

Mr. Hallinan: No further questions.

The Court: All right, Mr. Lucey.

(Witness excused.)

Mr. Hallinan: I find myself without witnesses, your Honor, a very embarrassing situation, to say the least.

The Court: We will start tomorrow morning at 10.30. They are more essential than you are. Don't discuss the case. 10.30 tomorrow morning.

(Adjourned to October 24, 1956, at 10.30 o'clock a. m.)

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(639)

New York, October 24, 1956;
10.30 o'clock a. m.

Trial resumed.

(The following proceedings took place in the absence of the jury.)

Mr. Hallinan: Before I call my first witness I would like to go over with the jury, briefly, instead of passing them around, the redemption forms.

The Court: All right.

(Jury in box.)

The Court: All right, Mr. Hallinan, go ahead.

Mr. Hallinan: With your Honor's permission, rather than passing all of these around, I should like to just go over them briefly.

The Court: Are you in a position now to go over the bonds, too?

Mr. Hallinan: Yes. May I sit down for just a minute please.

The Court: You remember, you looked at the bonds before we had all the entries on them identified. (640) And we can go ahead now.

(To Mr. Hallinan) Do you want a recess for a minute?

Mr. Hallinan: Yes, please.

The Court: All right. Why don't we take a brief recess just for a few minutes. You can go back in the juryroom.

(Jury retired to the juryroom.)

The Court: We will take a five or ten-minute recess. You can go ahead when you are ready.

(Short recess.)

(The following proceedings took place in the absence of the jury.)

The Court: Before the jury comes back in, I had a chance to complete my work on the two statements that Mr. Hallinan had given to me.

I am disposed to give one of them to the defendant. I am not going to give the defendant the master statement because I don't think there is any material inconsistency that would be worthy of our attention and it does have many things in it that are unrelated to this case altogether.

So I am going to mark the so-called master statement Court's Exhibit 3 and seal it.

(641) (Marked Court's Exhibit 3.)

The Court: The second statement is a statement of February 28, 1955, regarding this conversation with Wissenfeld which you cross-examined him on. I don't think it is material, but inasmuch as I don't see anything in here that could prejudice the Government for you to have, I would like for you to see the statement, and then if you want to ask for any relief on the basis of it we can pass on it rather than my keeping it secret from you. So we will mark it Court's Exhibit 4 for identification

and give it to Mr. Rosenblum, or if you have a copy you can give that to him, or look at the original. You decide whether you think it is important enough to get a photostat, or whatever you want.

Do you want to look at it? Is it something you want to look at, or shall we go ahead? Maybe you can look at it while Mr. Hallinan is explaining the documents to the jury.

Mr. Rosenblum: No, I would rather hear it.

The Court: You want to hear that. The only thing, if there is anything you wanted——

Mr. Rosenblum: I will let Mr. Perry look at it now.

(642) The Court: All right. We will get the jury back in then.

(Jury enters courtroom.)

The Court: All right, I guess we can start.

Mr. Hallinan: With the Court's permission, I would like to go over both the redemption forms and the bonds themselves.

The Court: All right.

Mr. Hallinan: I think you will recall that Government's Exhibit 1-A is the redemption form accompanying the first bond that was cashed, and it has above where it says "Write signature"——

Mr. Rosenblum: Might I suggest, if your Honor please, that whatever is said about the particular item be not for instance as Mr. Hallinan said, "It accompanied a particular thing."

He is now talking about the evidence.

Mr. Hallinan: I will follow that gladly.

The Court: Do not make it too hard for us to get a simple understanding. Go ahead. If you can accommodate Mr. Rosenblum, fine; if not, don't worry about that.

Mr. Hallinan: Government's Exhibit 1-A is a

redemption form and it is signed with the name (643) Nat Chernoff.

Government's Exhibit 1 in evidence is the bond which was cashed on December 29, 1949, and it is registered in the name Nat and Blanche Chernoff, and on the back it is signed Nat Chernoff.

Government's Exhibit 2-A is a redemption form with the name Nat Chernoff on that portion above "Write signature" and also the name "Miller" in handwriting on the face of that.

Government's Exhibit 2 are several bonds registered in the name of Mrs. Blanche Chernoff or Nat Chernoff. I won't go through these individually, but most of the bonds in this group are the same. On the back they are similar to this last one in the group. On two lines they are signed Nat Chernoff.

Government's Exhibit 3-A is the redemption form with the amount entered and the name Nat Chernoff signed twice.

The Court: Can everybody see them or would you like to have them passed around?

A Juror: No, I can't see it.

The Court: Why don't you pass Exhibits 1 and 1-A around. It won't take long. Then 2 and 2-A and then go ahead and discuss them as you go along. (644) Start off by giving them 1 and 1-A now.

Mr. Hallinan: I won't repeat anything about these.

The Court: Just pass that and then follow it right up with 2 and 2-A.

(Government's Exhibits 1 and 1-A handed to the jury by Mr. Hallinan.)

The Court: You can do it right now. The foreman is ready for the next one.

(Government's Exhibits 2 and 2-A handed to the jury by Mr. Hallinan.)

(Government's Exhibits 3 and 3-A handed to the jury by Mr. Hallinan.)

The Court: Have you given them 3?

Mr. Hallinan: Yes.

The Court: Did you call their attention to——

Mr. Hallinan: Yes.

4-A is a redemption form signed twice Nat Chernoff, and 4 are bonds registered in the name of Mrs. Blanche Chernoff or Nat Chernoff, cashed on January 30 at the bank, and signed on the back Nat Chernoff twice (handing to jury).

5-A is a redemption form signed in the name Nat Chernoff and Thomas Young above that portion which (645) reads "Identification"; and 5 are the bonds registered in the name of Blanche, some of them Steven or Nat Chernoff, and signed on the back Nat Chernoff (handing to jury).

6-A is a redemption form signed twice Nat Chernoff, and the identification above that portion which reads "Identification" is in the name Thomas Young, and the bonds are registered in the name of Blanche or Nat Chernoff and signed on the back Nat Chernoff (handing to jury).

7-A is a redemption form in the name Blanche Chernoff, and it has on it the initials "JM"; and the bonds in 7 are registered in the name of David Chernoff or Blanche Chernoff, and I think there are one or two in there registered in the name Marilyn or Blanche Chernoff, and they are signed on the back Nat Chernoff, some are signed Blanche Chernoff along with the name Nat Chernoff (handing to jury).

8-A is a redemption form signed David Chernoff, has above "Identification" Thomas Young and the

initials "JM" on that redemption form. Exhibit 8 consists of one single bond registered in the name of Mr. David Chernoff (handing to jury).

(646) The Court: All right. Do you want to get the next witness in?

Mr. Hallinan: Yes. Mr. Heddesheimer.

FRED HEDDESHEIMER, called as a witness on behalf of the Government, being duly sworn, testified as follows:

Direct examination by Mr. Hallinan:

Q. Mr. Heddesheimer, by whom are you employed? A. Pennsylvania Exchange Bank.

Q. Keep your voice up.

The Court: Talk to the last juror over there.

A. Pennsylvania Exchange Bank.

Q. How long have you been so employed? A. 17 years.

Q. In what capacity are you presently employed? A. Auditor.

Q. As auditor, are you familiar with the various records kept by the bank? A. Yes.

Q. I show you Government's Exhibits 10 and 11. 10 is a signature card in the name of Thomas Young and I ask you if that is a record and document kept in the regular course of business by the Pennsylvania Exchange Bank?

(647) A. Yes.

Q. Is it the regular course of business of that bank to keep that record? A. Yes.

Q. I ask you the same questions with respect to Government's Exhibit 11, which is a signature card in the name of John Case? A. Yes, the same thing.

Mr. Hallinan: May we have this marked 19 for identification, please.

(Government's Exhibit 19 marked for identification.)

Q. Mr. Heddesheimer, I show you Government's Exhibit 19 for identification and ask you what it is? A. It is a correspondence file on the matter of Nat Chernoff, record of the bank.

Q. Is it from the Pennsylvania Exchange Bank? A. From the Pennsylvania Exchange Bank.

Q. Is that kept in the regular course of business by the bank? A. Yes.

Q. And is it the regular course of business of the bank to keep that record? A. Yes.

(648) Mr. Hallinan: May the record indicate that I am now going to remove some documents from Government's Exhibit 19 for further identification?

Mr. Rosenblum: May I see the entire file before it is taken apart, whatever you showed to the witness?

Mr. Hallinan: You certainly may. This is one you have seen before.

Mr. Rosenblum: You don't know what I have seen or what I haven't seen. I don't think any comment is necessary.

For your information I may tell you you are wrong about the statement——

The Court: I can't hear you.

Mr. Rosenblum: For his information I am telling him he is wrong about the statement he made in front of the jury because I don't see this full file.

The Court: Well, all right; go ahead.

Mr. Rosenblum: Should I go through this quickly before the document is offered? I will then read that paper.

The Court: Yes.

Mr. Rosenblum: I will just go through it (649) quickly. I think it will save some time.

The Court: Fine.

(A pause.)

The Court: All right.

Mr. Hallinan: I don't know whether I had finished my statement.

May the record indicate that I am now removing from Exhibit 19 for identification certain documents.

May we have this marked 20, that letter.

(Government's Exhibit 20 marked for identification.)

Mr. Hallinan: And that one 20-A.

(Government's Exhibit 20-A marked for identification.)

Mr. Hallinan: That one 20-B.

(Government's Exhibit 20-B marked for identification.)

Mr. Hallinan: 21.

(Government's Exhibit 21 marked for identification.)

Q. Mr. Heddesheimer, I show you Government's Exhibit 20 for identification and ask you what it is? A. It is a letter from the Treasury Department, dated July 19, 1950,

addressed to James W. Miller, (650) President, Pennsylvania Exchange Bank, signed Charles D. Peyton, Deputy Commissioner in charge..

Q. Was that document kept in the regular course of business by the bank? A. Yes.

Q. Was it the regular course of business of the bank to keep that document? A. Yes.

Q. I show you Government's Exhibits 20-A and 20-B for identification and ask you what they are? A. It is a schedule of paid bonds.

Q. Indicating 20-A. A. In the matter of Nat Chernoff. Another schedule of bonds in the matter of Nat Chernoff.

Q. 20-B. Indicating 20-B. A. 20-B.

Q. Are both of those documents kept in the regular course of business by the bank? A. Yes.

Q. Was it the regular course of business of the bank to keep those documents? A. Yes.

Q. Now I show you Government's Exhibit 21 for identification and ask you what it is? (651) A. It is a circular letter from the Treasury Department, Washington, dated December 19, 1947.

Q. Was that kept by the bank in the regular course of business? A. Yes.

Q. Was it the regular course of business of the bank to keep that record? A. Yes.

Mr. Hallinan: The Government offers Exhibits 20, 20-A, 20-B, 21.

(652) Mr. Hallinan: Mr. Perry would like a stipulation which I think I have covered already, but I appreciate their position and we will make it unmistakable here.

The Government will stipulate that each document contained in Government's Exhibit 19 for identification is a document kept in the regular course of business by that bank and it is the regular

course of business of that bank to keep that record. This stipulation has nothing to do with relevance or materiality, just as to the——

Mr. Perry: Judge, it will avoid, perhaps, the necessity of recalling the witness.

Thank you.

Mr. Hallinan: There is no objection.

(Government's Exhibits 20, 20-A, 20-B and 21 for identification received in evidence.)

Mr. Hallinan: I have no further questions of this witness.

Mr. Rosenblum: I have no questions.

(Witness excused.)

Mr. Hallinan: Before we call the next witness, may I read these exhibits to the jury, your Honor, pertinent portions of them?

(653) The Court: Yes.

(Mr. Hallinan read Government's Exhibit 20 to the jury.)

Mr. Hallinan: Briefly, these two exhibits, 20-A and 20-B, are schedules of the bonds attached to that letter and referred to in the letter I have just read to you.

(Mr. Hallinan then read from Government's Exhibit 21 to the jury.)

Mr. Hallinan: Mrs. Skotchdopole.

ELIZABETH SKOTCHDOPOLE, called as a witness on behalf of the Government, being duly sworn, testified as follows:

Direct examination by Mr. Hallinan:

Q. Mrs. Skotchdopole, what is your present occupation? A. I am a housewife.

Q. Were you at one time employed at the Pennsylvania Exchange Bank? A. Yes, I was.

Q. And will you give us the period of your employment at that bank? (654) A. I worked at the Pennsylvania Exchange Bank from the latter part of October 1951 until the the end of June 1952.

Q. And in what capacity were you employed at the bank while you were there? A. I was secretary to Mr. Miller, the defendant.

Q. Do you see Mr. Miller in court now? A. Yes, I do.

Mr. Hallinan: May the record indicate that the witness has identified the defendant.

Q. Will you describe briefly for the Court and jury what your duties were as secretary to Mr. Miller? A. Well, as secretary to Mr. Miller I took his dictation and transcribed the dictation, I did the filing for Mr. Miller and answered his telephone, and I received callers.

(655) Q. Now will you tell us, as you recall, was there a definite procedure for mailing matter out of the bank while you were employed as Mr. Miller's secretary? A. Well, as I recall, when I finished my transcribed dictation I placed it in a folder and placed it on Mr. Miller's desk for signature, and when he, in turn, signed any correspondence I took it back to my desk, folded it and placed it in an envelope and placed it in a file box on my desk for the outgoing mail which was, in turn, picked up by a clerk, and she took it to her desk and sealed it and mailed it.

(Government's Exhibits 25 and 26 marked for identification.)

Q. Mrs. Skotchdopole, I show you Government's Exhibit 25 for identification and I ask you what it is? A. Well, Government's Exhibit No. 25 is a copy of a letter dictated by Mr. Miller, the defendant, on December 26, 1951, to Mr. E. F. Bartelt, the Fiscal Assistant Secretary of the Treasury Department, Fiscal Service, Washington, D. C.

Q. Dictated to whom? A. To me.

Q. Did you tell us the date? A. December 26. (656) Yes, sir.

Q. I show you Government's Exhibit 26 for identification and ask you what that is? A. Government's Exhibit No. 26 is a copy of a letter dictated to me on April 4, 1952, by Mr. James W. Miller, the president, defendant, to Mr. Charles D. Peyton, Deputy Commissioner in charge of the Treasury Department, Fiscal Service, in Chicago.

Mr. Hallinan: The Government will offer both of these in evidence (handing to Mr. Rosenblum).

(Government's Exhibits 25 and 26 for identification received in evidence.)

The Court: All right.

Q. Mrs. Skotchdopole, I ask you to look once again at Government's Exhibits 25 and 26 and tell the Court and jury if your initials are typed in at the bottom of both of those exhibits? A. Yes, my initials appear on both Exhibits 25 and 26.

Q. What initials are those? A. E. D.

Q. Was that your maiden name? A. Yes.

Q. What do those initials stand for? (657) A. Elizabeth Driscoll.

Q. I show you Government's Exhibit 22 for identifica-

tion and I ask you to compare it with Government's Exhibit 25 in evidence and I ask you if Government's Exhibit 22 for identification is a photostatic copy of the original of Government's Exhibit 25? A. Government's Exhibit No. 22 is a photostatic copy of the original of Government's Exhibit No. 25.

Q. Does Mr. Miller's signature appear on Government's Exhibit 22 for identification? A. Yes, Mr. Miller's signature appears.

Q. I ask you to look at Government's Exhibit 26. Before we pass Goverment's Exhibit 22, your initials are not on that letter; is that correct? A. Yes, they are. Oh, that is "Noted." I am sorry. That says "Noted." I beg your pardon. No, they do not appear.

Mr. Rosenblum: Will you keep your voice up? I can't hear you.

A. I am sorry. My initials do not appear on the photostatic copy of the original.

Q. I show you Government's Exhibit 26 in evidence which you have identified and 23 for (658) identification. I ask you to compare those two exhibits and tell the Court and jury if 23 is a photostatic copy of the original of Government's Exhibit 26? A. Government's Exhibit No. 23 is a photostatic copy of the original of Government's Exhibit No. 26.

Q. And do your initials appear on Government's Exhibit 23 for identification? A. No, they do not.

Mr. Hallinan: The Government offers 22 and 23.

Mr. Rosenblum: May we have all four again, please?

Mr. Hallinan: Yes (handing).

Mr. Rosenblum: Are you putting all four in, Mr. Hallinan?

Mr. Hallinan: Two are in. I am putting in the remainder.

Mr. Rosenblum: I have no objection to all four. I mean, two are in already. No objection.

(Government's Exhibits 22 and 23 for identification received in evidence.)

The Court: All right.

Q. Now, Mrs. Skotchdopole, was the regular mailing (659) procedure followed with respect to Government's Exhibits 22 and 23? A. Yes, I believe the regular mailing——

Mr. Rosenblum: I object to it at the moment, not knowing what the word "regular" is that is referred to.

Mr. Hallinan: She has testified as to the procedure.

Mr. Rosenblum: Oh, you mean the one she previously——

The Court: Was the procedure as you described followed?

The Witness: Yes.

Mr. Rosenblum: I will withdraw my objection.

Q. Did you answer the question? A. Yes, it was the procedure followed.

Mr. Hallinan: I have no further questions. I should like to read both of these exhibits to the jury, your Honor.

The Court: All right.

(Mr. Hallinan read Government's Exhibits 22 and 23 to the jury.)

I. Alfred Levy—for Government—Direct

(660) Mr. Halliman: You may inquire.
Mr. Rosenblum: I have no questions.
(Witness excused.)
Mr. Hallinan: Mr. Levy.

I. ALFRED LEVY, called as a witness on behalf of the Government, being first duly sworn, testified as follows:

Direct examination by Mr. Hallinan:

Q. Mr. Levy, what is your occupation? A. I am a lawyer.

Q. Are you in a firm? A. I am in the firm of Dorff & Levy.

Q. And how long have you been in that firm? A. Since 1920 or '21; '21, I think.

Q. Does your firm represent in various matters or handle various matters for the Pennsylvania Exchange Bank? A. Yes, sir.

Q. How long have you represented them? A. Since 1927.

Q. Do you recall sometime in May of 1952 being called upon by Mr. Miller to write a letter to the Treasury Department in relation to the cashing of certain bonds which were cashed at the bank? A. Yes.

(661) Mr. Hallinan: Mark this 27, please.

(Government's Exhibit 27 for identification marked.)

Mr. Hallinan: 28.

(Government's Exhibit 28 for identification marked.)

Q. Mr. Levy, I show you Government's Exhibit 27 for identification. I ask you what it is (handing to witness). A. It is a letter written by Mr. Miller to myself on the subject of Nat Chernoff.

Q. On what date? A. On May 13, 1952.

Q. Is Mr. Miller's signature on that memo? A. Yes, sir.

Q. I show you Government's Exhibit 28 for identification and ask you what it is (handing to witness). A. It is a memorandum, written memorandum, to me from Mr. Miller dated May 21, 1952, on Nat Chernoff family.

Mr. Hallinan: The Government offers 27 and 28.

(Pause.)

Mr. Hallinan: Mr. Levy, do you have your file (662) with you?

The Witness: Mr. Dorf has it.

Mr. Hallinan: Could the witness step out long enough to get the file from Mr. Dorff?

The Court: Sure.

(Witness leaves stand and returns.)

Mr. Rosenblum: No objection.

The Court: Received.

(Government's Exhibits 27 and 28 for identification received in evidence.)

Mr. Hallinan: May I read both of these to the jury?

The Court: Yes.

(Mr. Hallinan reads Government's Exhibits 27 and 28 to the jury.)

Q. Now, Mr. Levy, do you have in your file a copy of a letter sent by Mr. Bartelt to Mr. Miller and dated May 20, 1952? A. Sent by Bartelt to Miller?

Q. Yes.

Mr. Rosenblum: May what?

Q. I am sorry. I gave you the date of the letter. Yes. Dated May 20, 1952 is the date on the letter. A. May 20, yes. I have a copy of a letter dated (663) May 20, 1952, sent to Mr. Miller, president, Pennsylvania Exchange Bank, signed, purporting to be signed by E. F. Bartelt.

Mr. Hallinan: May we have this marked 28A, please?

(Government's Exhibit 28A marked for identification.)

Mr. Hallinan: The Government will offer Government's Exhibit 28A.

(Government's Exhibit 28A for identification received in evidence.)

Mr. Hallinan: May I read this to the jury?

The Court: Yes.

(Mr. Hallinan reads Government's Exhibit 28A to the jury.)

Q. Now, pursuant to these requests of Mr. Miller which you have identified and which we have read to the jury, did you sometime thereafter dictate a letter to the Treasury Department on behalf of Mr. Miller? A. On behalf of the bank.

Q. Did the bank itself call you or send you these communications and requests? A. The bank sent it through Mr. Miller, but it was on behalf of the bank that I sent that letter.

(664) Q. And who else at the bank requested that you write this letter? A. Nobody.

Q. Did you dictate a letter in response to this request, Mr. Levy? A. I did.

Q. Did you ever see that letter in final form? A. Yes, recently.

Q. No, at that time did you? A. Oh, no, no. I dictated that letter in the morning of June 4. I sailed for Europe on the Queen Elizabeth, I think it was the afternoon on that same day.

Q. And did you turn the matter over to anyone else to complete? A. To my partner, Mr. Dorf.

Q. Do you remember in 1952 whether or not your office had a procedure with respect to outgoing mail. A. We had the same procedure then that we have now. Do you want it?

Q. Yes, please. Would you tell the Court and jury what that procedure was? A. If I am writing a letter I dictate it to my secretary, she brings it in when she finishes it. I go over the letter, sign it, return it to her, and she (665) is supposed to put it in the mail box.

Q. What mail box? A. There is a chute right outside our office, United States Post Office chute.

Mr. Hallinan: You may inquire.

Mr. Rosenblum: I have just one question.

Cross-examination by Mr. Rosenblum:

Q. Are you retained by Mr. Miller personally or by the bank? A. No, sir; by the bank.

Q. Has that been the same for the entire period from 1927 up to the present time? A. I am general counsel for the bank from 1927 or '28—I don't recall—until this present date.

Q. And always the same? A. Never represented Mr. Miller that I recall in anything.

Q. In this particular matter you were acting for the bank? A. I was acting for the bank.

Mr. Rosenblum: No further questions.

I. Alfred Levy—for Government—Re-direct

Re-direct examination by Mr. Hallinan:

Q. Did you ever get a letter from a thing, person, (666) substance called the bank?

Mr. Rosenblum: I object to the form of that question. I do not understand it.

The Court: I will let the facts stand as they are. I will sustain the objection.

Q. The bank in this case operated through Mr. Miller, did it not? A. It operated through all the officers of the bank.

Q. Mr. Levy, my question is simple. The bank in this case—I am not talking about your vast experience in the bank—the bank in this case operated through Mr. Miller, did it not? A. Mr. Miller signed the letters and sent me the letters, yes.

Mr. Hallinan: That is all.

(Witness excused.)

The Court: Are you going to start another witness now?

Mr. Hallinan: I would like to put Mr. Dorff on, but I think he will continue over.

The Court: If he will continue over, we will break now. If you think you can finish him, fine.

Mr. Hallinan: I will try and hurry along as much as possible. Maybe I can finish him in fifteen (667) minutes.

The Court: There is no reason to push you. We will start with him then at 2 o'clock. It does not make any difference.

Mr. Hallinan: All right, fine. He is a lawyer.

The Court: All right, put him on.

Mr. Hallinan: Mr. Dorff, please.

MAX DORFF, called as a witness on behalf of the Government, being first duly sworn, testified as follows:

Direct examination by Mr. Hallinan:

Q. Let us see if we can proceed quickly. Are you a partner of the Mr. Levy who was just in here? A. Yes, sir.

Q. And that firm has represented the Pennsylvania Exchange Bank for a number of years? A. Yes, sir.

Q. About twenty-five, is it? A. Upwards of twenty-five years.

Q. Did there come a time in June of 1952, when Mr. Dorff asked you to carry through with a matter that he had started for the Pennsylvania Exchange Bank? A. You said Mr. Dorff. I think you mean——

Q. Mr. Levy, yes. You are right. (668) A. Yes.

Q. Did you at that time send a copy of a letter over to Mr. Miller at the Pennsylvania Exchange Bank?

Mr. Rosenblum: May we have the witness tell us what he did.

Q. What did you do, Mr. Dorff?

Mr. Rosenblum: I realize we want to help Mr. Dorff, but I can't follow the questions. It is too quick. I do not think the witness should mind coming back if we are not finished.

The Court: Tell us what you did, Mr. Dorff.

A. On June 4, 1952, my partner, Mr. Levy, dictated a letter to Mr. E. F. Bartelt, Fiscal Assistant Secretary, Treasury Department, Fiscal Service, Washington, D. C. Mr. Levy left that day, I believe, for Europe and asked me to sign the letter in the firm name and send it over to the bank, which I did.

Mr. Hallinan: Will you mark it 29, please?

(Government's Exhibit 29 for identification marked.)

Q. I show you Government's Exhibit 29 for identification and I ask you what this is, Mr. Dorff (handing to witness). A. Yes, sir, that's a copy of the letter.

(669) Q. Of what letter? A. The letter that I signed Dorff & Levy and sent over to Mr. Miller.

Q. Did both the original and copy go to Mr. Miller? A. I believe the original and the copy went over to Mr. Miller.

Mr. Hallinan: The Government will offer Government's Exhibit 29.

(Mr. Hallinan hands document to Mr. Rosenblum.)

Mr. Hallinan: Mark this 29A, please.

(Government's Exhibit 29A for identification marked.)

Mr. Rosenblum: No objection.

(Government's Exhibit 29 for identification received in evidence.)

Q. I show you Government's Exhibit 29A for identification and ask you what it is (handing to witness). A. That is the memorandum sent over by me to Mr. Miller accompanying this letter of June 4, 1952.

Q. Accompanying Government's Exhibit 29? A. The one you just showed me.

Mr. Hallinan: The Government will offer 29A.

Mr. Rosenblum: No objection.

(Government's Exhibit 29A for identification (679) received in evidence.)

The Court: All right.

Q. Mr. Dorff, I ask you to look once again at 29A and tell me if you can determine from that whether or not you sent the original letter over to Mr. ~~Miller?~~ —A. I would say yes.

Mr. Hallinan: May I read 29 and 29A to the jury, your Honor?

The Court: Yes. Do you want to hold the witness while you do that?

Mr. Hallinan: Yes. The witness' testimony—I would much rather do it by reading each exhibit by exhibit.

The Court: All right. Go ahead.

(Mr. Hallinan read Government's Exhibit 29 to the jury.)

The Court: Are you going to read the other exhibit?

Mr. Hallinan: I am sorry. Yes.

(Mr. Hallinan read Government's Exhibit 29A to the jury.)

Q. Are those your initials "M. D."? A. Yes.

Q. You sent this along with the other exhibit (670a) I have just read, is that correct? A. Yes, sir.

The Court: We will suspend now until 2.15. Don't discuss the case.

(Jury retired.)

The Court: All right. 2.15.

(Recess to 2:15 p. m.)

(671)

AFTERNOON SESSION

(Jury in box.)

MAX DORFF resumed.

Direct examination continued by Mr. Halliman:

Q. Now, Mr. Dorff, going over Exhibits 29 and 29A, which were the copy of the letter you sent to Mr. Miller and the memorandum which accompanied that letter, thereafter did you hear from Mr. Miller? A. Yes, sir.

Q. Do you recall when that was? A. From these records, it was the following day.

Q. And how did you hear from him? A. Pardon.

Q. How did you hear from him? Did he come to you personally? A. Mr. Miller telephoned me and asked me to change part of the second page of the letter that was sent over to him on June 4th.

Q. And what did you do? A. I changed it accordingly and then sent him the rewritten page too with that correction in it.

Q. What did he ask you to change on that letter? A. He asked me to change the last three lines of the first paragraph on page 2 of that June 4th (673) letter and in place of that put in a different sentence.

Q. What was the change? Tell us what the change was.

The Court:- Tell us what he struck out and what you put in.

A. Yes, sir. On the fifth line of the second page of that letter of June 4th he asked me to strike out beginning with with the word "and" on the fifth line and running down to the end of that paragraph.

Q. Read that.

The Court: Read it to us.

A. Reading as follows:

"And identified the person who cashed the bonds as the one who claimed he was Mr. Chernoff and who was introduced to Mr. Miller as Mr. Chernoff by Mr. Mishel."

And in place of that to rewrite as follows:

"And we have been informed that the person who cashed the bonds was subsequently indicted."

Q. Did he indicate in the telephone conversation that he had received the draft that you sent him? A. Nothing was said about it. He just asked me to make that change.

(673) Mr. Hallinan: Mark this as Exhibit 30.

(Marked Government's Exhibit 30 for identification.)

Mr. Hallinan: The Government will offer 30 in evidence.

Mr. Rosenblum: No objection.

The Court: Received.

(Government's Exhibit 30 for identification received in evidence.)

Mr. Hallinan: May I circulate this among the jury, if your Honor please?

The Court: Yes.

Whose handwriting is that?

The Witness: Mine.

The Court: Your handwriting?

The Witness: Yes, sir.

(Mr. Hallinan hands to jury.)

Q. Now, after that change was made, did you thereafter, pursuant to the request, send the changed page 2 to Mr. Miller? A. I did.

Q. Do you recall when that was? A. June 5.

Q. Do you recall whether you sent along an accompanying memo with it? (674) A. I did.

(Government's Exhibits 31 and 31-A marked for identification.)

Q. I show you Government's Exhibits 31 and 31-A for identification and ask you if this is the changed page 2 and if 31-A is the accompanying memorandum with that that you sent to Mr. Miller? A. Yes, sir.

Mr. Hallinan: The Government offers 31 and 31-A.

Mr. Rosenblum: No objection.

The Court: Received.

(Government's Exhibits 31 and 31-A for identification received in evidence.)

Mr. Hallinan: May I read these, briefly, your Honor?

The Court: Yes.

Mr. Hallinan: I will read 31-A first.

(Mr. Hallinan reads Government's Exhibit 31-A to the jury.)

Mr. Hallinan: Then the initials M. D. are on there.

Q. Are those your initials, Mr. Dorff? A. They are.

(675) (Mr. Hallinan reads Government's Exhibit 31 to the jury.)

Q. Now I show you Government's Exhibit 24 for identification and I ask you if this is the final form of the letter that you sent to Mr. Miller? A. Yes, sir.

Q. And whose signature is on the letter? A. That is mine.

Q. What does it say? A. Signature?

Q. Yes. A. Dorff & Levy.

Q. And you signed that? A. Yes, sir.

Q. Now after the last document that you have testified that you sent over to Mr. Miller, did you get anything back after that? A. After that——

Q. No. In connection with these documents. Did you receive this letter back from Mr. Miller? A. I don't recall receiving it back.

Mr. Hallinan: The Government offers Exhibit 24.

(676) Mr. Rosenblum: No objection.

The Court: Received:

(Government's Exhibit 24 for identification received in evidence.)

Mr. Hallinan: You may inquire.

The Court: Shouldn't Exhibit 24 be shown to the jury?

Mr. Hallinan: It has in effect. The entire first page was read by me.

The Court: I think they should see every document that has gone in. They have already had the content read to them, and they can look at that briefly. You can go ahead, Mr. Rosenblum.

Mr. Rosenblum: I would just as soon wait.

(Government's Exhibit 24 handed to jury by Mr. Hallinan.)

A Juror: Could two look at it at the same time?

The Court: Surely.

(To Mr. Hallinan) Do you have any photostats?

Mr. Hallinan: Yes, I believe I have.

The Court: Show it to Mr. Rosenblum.

(Mr. Hallinan hands photostats of Government's Exhibit 24 to jury.)

(677) Cross examination by Mr. Rosenblum:

Q. Mr. Dorff, I hand you 29 in evidence and ask you whether or not—and I believe you testified that that is the letter in the form it was in at the time you sent it—at the time either you or Mr. Levy sent it over to Mr. Miller? A. You mean the first time?

Q. Yes. A. Yes, sir.

Q. I show you Government's Exhibit 24 and ask you whether that is the letter which was sent to the Government? A. My recollection is that 24 was sent to the bank.

Q. And then returned to you? A. No.

Q. Is that the final letter? A. I believe that is the final letter.

Q. With the change that was made? A. With the change that was made.

Q. I first ask you whether or not the first page of the letter prepared by Mr. Levy was changed at all? A. To my recollection, the first page was not changed.

Q. This is the letter you say was prepared by (678) Mr. Levy and sent over by you to Mr. Miller because he had left or was about to leave for Europe? A. That's right.

Q. Is that right? A. That's right.

Q. And the first page was not changed? A. I don't believe the first page was changed at all.

Q. The second page was changed to the extent indicated, and I think you said the words, "and identified the person who cashed the bonds"——

Let me go back a little.

"Mr. Miller testified before the grand jury regarding the theft of these bonds . . ."

And then we have the place where it is marked out:

". . . and identified the person who cashed the bonds as the one who claimed he was Mr. Chernoff and who was introduced to Mr. Miller as Mr. Chernoff by Mr. Mishel."

That was taken out and in its place the words put, "and we have been informed that the person who cashed the bonds was subsequently indicted"; right? A. Yes, sir.

(679) Q. Now you say you talked with Mr. Miller about this change on the telephone? A. That is what I said.

Q. And at the time you discussed the matter of taking out these words that I just read? A. Yes, sir.

Q. And adding the words which you have on Government's Exhibit 30 which I think you testified was in your handwriting? A. Yes, sir.

Q. Now see whether it isn't a fact that at the time when he called you by telephone did he bring to your attention the fact that he was, that Mr. Levy as he set it up in the first instance was reciting something in detail as to what he did in the grand jury and wanted to change it so that he wouldn't be violating or making some improper statement or revealing something to the extent that he shouldn't reveal it as appeared before the grand jury?

Mr. Hallinan: I object to the form. There are eight questions included in that.

Mr. Rosenblum: I will change it.

The Court: All right.

Q. Can you tell us whether or not he brought to (680) your attention the fact that as Mr. Levy prepared it it might be his revealing the details of what occurred before

the grand jury to the extent that he shouldn't? A. I don't recall whether he gave me the reason for making the change. He may have.

Q. Would you say he didn't? A. My best recollection is that he asked me to make the change. He may have given the reason to me, because——

Q. The substance wasn't changed, was it? A. Pardon?

Q. The substance wasn't changed, was it?

Mr. Hallinan: I object to the form, your Honor.

The Court: I sustain the objection.

Mr. Rosenblum: Exception.

Q. Now then, you say, then, you made as appears on No. 30 prepared by you in your handwriting— A. Yes, sir.

Q. And it was incorporated in the letter which was sent out? A. Yes, sir.

Q. Is that right? A. That is my best recollection.

(681) Mr. Rosenblum: I have no further questions.

Mr. Hallinan: No further questions.

The Court: Thank you, Mr. Dorff.

The Witness: Is Mr. Hallinan finished with me?

The Court: Yes.

(Witness excused.)

Mr. Hallinan: Edward Sweeney.

EDWARD F. SWEENEY, called as a witness on behalf of the Government, being duly sworn, testified as follows:

Direct examination by Mr. Hallinan:

Q. Mr. Sweeney, by whom are you employed? A. I am employed by the Treasury Department, U. S. Secret Service.

Q. In what capacity? A. Special Agent.

Q. How long have you been a special agent in the Secret Service? A. 17 years.

Q. Now, on October 6, 1950, did you accompany Agent George J. Sershen of the Secret Service when he went to apprehend one Irving Mishel? A. I did, sir.

(682) Q. Now, can you recall if on that occasion when first apprehended Mr. Mishel made any statement to you or to Mr. Sershen? A. He did not, sir.

Q. Did you or did Mr. Sershen say anything to Mr. Mishel at that particular time? A. We notified him he was under arrest.

Q. Did either you or Sershen tell Mr. Mishel any of the——

> Mr. Rosenblum: I object. May we find out? May we get it from the witness what if anything was said, first, what his recollection may be, instead of leading?
>
> The Court: I think he is more interested in whether something was or was not said. All right. Go ahead, ask him in a general way.

Q. Was anything else said by you or by Sershen to Irving Mishel? A. To the definite nature I do not now recall, other than questioning concerning bonds, and I think Mr. Sershen advised him at that time that he had been identified as the individual who presented the bonds at the Pennsylvania Trust Company for negotiation.

Q. After being informed of that did Mr. Mishel (683) make any statement to you or to Mr. Sershen? A. No, sir.

Q. Now did you have occasion to visit the Pennsylvania Exchange Bank with Agent Sershen? A. I did, sir.

Q. Do you recall what day that was? A. That was a few days after Mishel was arrested, as I now understand October 10th.

Q. 1950? A. 1950.

Q. Will you tell the Court, please, who you and Agent Sershen saw at the Pennsylvania Exchange Bank on that day? A. To the best of my recollection, just prior to noon on that date, Agent Sershen and I contacted Mr. Miller, who was president of the Pennsylvania Exchange Bank. And at the time Agent Sershen asked Mr. Miller if he then could recall any further information concerning the negotiation of the Chernoff bonds.

Mr. Miller replied that he had given the matter considerable thought and that he did then recall that Irving Mishel had been into the bank on two prior occasions with bonds, and he recalled on one of the occasions that the name on the bonds was Chernoff.

(684) Agent Sershen asked him if he accepted the Chernoff bonds directly from Mr. Mishel.

He said yes, he had, but that the individual who he believed was the owner of the bonds was then in the front of the bank.

Agent Sershen asked him if—what the description was of this individual that was at the front of the bank.

And Mr. Miller replied that he didn't see him and couldn't give him a description of the individual.

Mr. —or Agent Sershen then inquired if the individual had been in once or twice with Mishel regarding negotiation.

Mr. Miller said that he could not then recall.

Agent Shershen then asked Mr. Miller if he had in-

formation concerning the redemption slips. The name I think was Thomas Young.

And at that point Mr. Miller produced the original redemption slips made out I think to Nat Chernoff and I think one or two or three or a few of them contained the name of Young.

Mr. Sershen then asked Mr. Miller if that writing contained on the bonds was in writing of (685) Young or who wrote the signature.

And Mr. Miller replied that he could not recall the incident and he believed that was a matter for the tellers.

Mr. Sershen then asked again if he could recall the description of the individual that was with Mishel in the bank at the time of negotiation.

And Mr. Miller could give no information concerning this individual.

However, Mr. Miller did state that he believed that Young was a friend of Mishel's and that Young, to the best of his knowledge, was employed at the Roth's Grill, between 47th and 48th, on the west side of Broadway.

At this particular point I asked Mr. Miller if he had a definite reason in mind as to why he didn't question the unknown in the bank, the alleged Mr. Chernoff in the bank at the time that Mr. Miller stated he was there.

And Mr. Miller replied that at the time he knew Irving Mishel well and he was doing business with him.

Agent Sershen and I then—or Agent Sershen, excuse me, then talked to the bank guard and one of the (686) tellers.

And we both proceeded to Roth's Grill and made inquiry there through the management in an effort to identify Mr. Young.

And we were informed that there was no individual there presently working nor did they have a record of anyone by that name ever employed by that company.

That is about all I can remember.

Edward F. Sweeney—for Government Direct

(687) Q. Getting back to the bank, before you left to go to Roth's Bar and Grill, was there anything else said to Mr. Miller by either you or Agent Sershen? A. Well, Agent Shershen inquired of Mr. Miller if that was the general practice that he used or the bank used in the negotiations of the bonds. He further asked him if at the time he had requested documentary identification of Mishel concerning Chernoff, and he said, "No" to both questions.

And then I believe that Mr. Shershen stated to him that he thought the procedure was highly irregular in accepting the bonds under those conditions.

Q. Now, on that occasion did either you or Agent Shershen show Mr. Miller a photograph of Irving Mishel? A. No, sir.

Mr. Hallinan: You may inquire.

Cross-examination by Mr. Rosenblum:

Q. Right near the end of your examination I think you said—see if I am quoting you correctly—"Then I believe that Shershen said he thought it was highly irregular." A. Yes, sir, I said that.

Q. Is that just your belief? A. No, no, it is my independent recollection (688) that that particular statement was said to Mr. Miller, but whether it was said at that particular time was the reason I so worded it, sir.

Q. I see. Where is Mr. Shershen? A. He is in the building, sir.

Q. In the building? A. Yes.

Q. You say you give us your recollection as to what occurred at the time you say you visited with Mr. Miller? A. Yes.

Q. And when was that? A. 1950, October.

Q. That is just about six years ago? A. Yes, sir.

Edward F. Sweeney—for Government—Cross

Q. A little past, a few days? A. Yes.

Q. Are you just testifying from recollection or are you testifying from some memorandum that you prepared at that time? A. I didn't prepare a memorandum, sir. I am testifying to the best of my recollection at this time.

Q. In other words, you are saying to us now that everything you have just testified to is something that (689) occurred six years ago and you are relying on your best recollection as to what you think occurred at that time? A. I wouldn't say that, sir. I would say that I have had a discussion with the Assistant U. S. Attorney concerning the case, and I have also discussed the case with Mr. Sershen, and we went over the story together.

Q. You went over the whole story together? A. The particular part that I just testified to.

Q. You knew, did you not, that Mr. Hallinan had no personal knowledge as to what occurred? A. Oh, I know that, sir.

Q. You understood that, did you not? A. Yes, sir.

Q. And he was telling you what other people said in discussing the story? A. No, no, I didn't say that.

Q. Well, what was it Mr. Hallinan was telling you concerning the facts that you have just testified to? A. Mr. Sershen had previously——

Q. I am asking you about Mr. Hallinan. A. Just let me finish.

Q. All right, go ahead. A. Mr. Sershen had previously discussed the case (690) in length with Mr. Hallinan, and Mr. Hallinan requested that I come from Boston to New York, at which time we discussed the case. Now, that is the refreshing that I have had on the case to this time.

Q. In other words, your refreshing consists of what you heard Mr. Sershen discuss with Mr. Hallinan? A. No, no. It is my own independent recollection plus what Mr. Sershen had also talked about with Mr. Hallinan.

Q. You mentioned Roth's Grill? A. Yes.

Q. You have no doubt that Mr. Miller told you about that, have you? A. I have no doubt at all.

Q. Right. Now, do you recall whether he told you at the time you were there that the man that Mr. Mishel had written at the time Mr. Miller was talked to with regard to the cashing of these bonds was a man who was in the employ of Mr. Mishel in Roth's Grill? A. No, sir. I believe I testified that Mr. Miller stated that Mr. Roth was a friend of Mr. Mishel's and he believed at that time that Mr. Roth was then employed at Roth's Grill.

Q. Mr. Roth was then employed at Roth's Grill? A. Mr. Ross.

(691) Q. Mr. Ross? A. His name slips my mind.

Q. See if you can think of it. A. Young. Excuse me. Mr. Young was then working at Roth's Grill.

Q. Didn't Mr. Miller tell you that the person whose bonds were being cashed was Mr. Chernoff? A. Yes, he did.

Q. And do you want this jury to understand——

Mr. Rosenblum: I withdraw it.

Q. Do you say now that he said there was a man at the front of the bank? A. Yes, sir.

Q. And that man was who—Mr. Young or Mr. Chernoff? A. He did not say.

Q. Didn't you ask him? A. Oh, I asked him.

Q. What did he say when you asked him who was at the front of the bank? I asked him why he didn't talk to the man.

Q. Please tell me whether or not you asked him as to what the name of that person was? A. He stated he didn't know. He said that Mishel had informed him that he was making a request to cash (692) the bonds for his friend.

Q. What was his name? A. He didn't say.

Q. And you did not ask him as to what name he said the friend possessed? A. Mr. Shershen asked him.

Q. It was in your presence, wasn't it? A. Yes, it was.

Q. And what did he say? A. He didn't know. He was doing business with Mr. Mishel.

Q. Is this your knowledge now? A. Yes, sir.

Q. That is your personal knowledge? A. That is my personal knowledge.

Q. You know who he was doing business with? A. That is what he told us.

Q. But did he say at the time that the bonds which were being cashed were not Mr. Mishel's? A. I don't think that question entered into it.

Q. Did he say that they were Mr. Mishel's? A. He said that Mr. Mishel had presented the bonds to him.

Q. But didn't he say he was presenting the bonds (693) which belonged to another person? A. For his friend, yes.

Q. For his friend? A. That's right.

Q. And Mr. Miller told you that at that time he had learned—that is, Mr. Miller had learned that the friend who was being discussed—that the friend who owned the bonds was supposed to be employed at Roth's Grill? A. No.

Q. Didn't the name Chernoff come in at all during your discussion? A. That was the name that Mr. Miller recalled on the bonds that Mishel had presented to him for cashment.

Q. You say "recall." Do you want us to understand that this is the first time that he was questioned about the bonds and he then for the first time recalled the name Chernoff? A. Yes, that's exactly what I want to convey.

Q. He did not know the name until that time, the name on the bonds? A. That is the first time Mr. Shershen—excuse me. I can't testify to that, but that is the

first time that I had heard Mr. Miller mention the name Chernoff.

(694) Q. And that date when you heard Mr. Miller mention the name for the first time, the name of Chernoff for the first time, was that date—October? A. October 10.

Q. 1950; is that right? A. That's right.

Q. I show you Government's Exhibit 20 and ask you whether it is not a fact that you knew that the Government advised Mr. Miller that the bonds were in the name Chernoff by letter.

Mr. Hallinan: I will object to this on the ground of relevancy, your Honor.

The Court: Well, let him answer it.

A. I wouldn't have any knowledge no matter what that letter says. I am talking of the first time that I talked to Mr. Miller and the first time I heard the name of the Chernoff bonds. Now, this letter, no matter what it says, wouldn't have any bearing on me.

Q. Didn't you have a discussion about the fact that the Government actually sent a series of photostats, one or more from each cashing, each one of which carried the name Chernoff? A. I wouldn't have that knowledge. Mr. Sershen would have that knowledge, not me.

(695) Q. You were there with Mr. Sershen? A. I was there with Mr. Sershen.

Q. Is it the fact that you yourself did not know at the time when you talked with Mr. Miller on October 10 that the bonds were in the name Sershen? A. The name Chernoff?

Q. In the name Chernoff. A. The name didn't mean anything to me, sir. Let me not try to mislead or anything. The name of Chernoff meant nothing to me because

the case was not assigned to me and I was just along with Mr. Sershen.

Q. So that you had no interest, or will you tell us the fact is you had no interest in the name that appeared on the bonds which had been put through the Pennsylvania Bank? A. I wouldn't have had a direct interest. I had other outside interests.

Q. In other words, you had no opportunity to learn the name which appeared on the bonds? A. That's right.

Q. Is that right? A. That's true.

Q. Weren't you in this building with Mr. Mishel at the time he was arraigned and charged with passing (696) bonds in the name of Chernoff? A. Yes, I was.

Q. And didn't you hear the name Chernoff referred to as the name that appeared on these bonds? A. No, sir. I didn't. I didn't attend the Commissioner's hearing. I merely escorted Agent Sershen to this building with a prisoner, and that was all. I waited outside.

Q. Mr. Sershen at no time told you that the bonds were in the name of Chernoff? A. Yes, sir, he did, but the name meant nothing to me.

(697) Q. So that the fact is you got the name from Mr. Miller for the first time, didn't you? A. Mr. Miller mentioned the name Chernoff as coming—as being presented by Mishel.

Q. Being presented by Mishel? A. Yes.

Q. Is it the fact that he said at the time that a man was presented by the name of Chernoff and that he asked him and that Mr. Mishel said, "He is an employee of ours at Roth's Restaurant," not grill? A. No.

Q. And then that Mr. Chernoff acknowledged that? A. No, not at all.

Q. In fact, you just went along as an officer assisting another officer who was carrying the case? A. Very true.

Q. Isn't that a fact? A. That is very true.

Q. And all these facts that you have testified to today were facts that you got on one occasion? A. That is right.

Q. Did you know that a complaint had been filed against Mr. Mishel in this building? (698) A. I was with him at the time of arrest.

Q. And during the time when he was arrested didn't Mr. Sershen tell him why he was arrested? A. He did.

Q. What did he say to him? A. He told him he was being arrested for the illegal negotiation of the Chernoff bonds.

Q. But you heard that, didn't you? A. Well, I may not have heard Chernoff, but if I heard it it doesn't mean anything to me.

Q. You will not say that he didn't use the name Chernoff? A. No.

Q. But if he did, the name didn't mean anything to you? A. That is right.

Q. For how long a time had you been an agent at that time? A. 17—well, a dozen years.

Q. About 12? A. Yes.

Q. Before you accompanied Mr. Sershen to make the arrest did Mr. Sershen tell you what case you were going out on? (699) A. I don't recall.

Q. You wouldn't say that he didn't tell you what you were going on? A. Oh, he brought me up to date on what had transpired.

Q. Didn't he then mention the name Chernoff? A. He may well have mentioned it; I don't know. It didn't mean anything to me.

Q. Again it mean nothing to you? A. That is right.

Q. What did the name Young mean to you? A. Nothing at all.

Q. But you remembered that name, didn't you? A. I do, sir.

Q. But didn't remember Chernoff? A. Oh, I remem-

bered Chernoff but, as I say, it doesn't mean anything to me.

Q. Didn't even mean the name of the person who allegedly was the owner of the bonds upon which you were assisting a brother officer to make an arrest? A. It wasn't my investigation; that was another agent's investigation.

Q. What did you go along for? A. To aid Mr. Sershen.

(700) Q. So that you say your function was in assisting in making the arrest of Mr. Mishel? A. That is right, sir.

Q. Isn't it the fact that at the time you saw Mr. Mishel he was in custody? A. No, sir. I went with Mr. Sershen, the police office, 7 o'clock in the morning, to the Bronx, Grand Concourse, arrested Mr. Mishel.

Q. Do you know whether the arrest was made by Detectives Sherdel and McCoy and Wall of the 42nd Squad, up in the Bronx? A. I can't tell you that, sir, no.

Q. What is that? A. I couldn't tell you the man's name now. They don't mean anything to me.

Q. Mr. Mishel gave an address as living up in the Bronx on the Grand Concourse? A. That is where I went.

Q. You are sure that on October 6, 1950, one or more of the detectives, either Sherdel, McCoy or Wall of the 42nd Squad— A. It could be, sir; I know there was a detective, but what his name is now I don't now recall.

Q. Could it be the 42nd Squad? (701) A. I would think that that would be the house that would take in the Grand Concourse.

Q. That is the place you went to? A. I didn't.

Q. Did you take Mishel there from his home? A. No, sir, I didn't. I took him right downtown, took him——

Q. Down to this building here? A. No, I didn't. I took him first to eat and took him from eating down to my building at, I think it was, 273 Broadway or 90 Church, I have forgotten which now.

Edward F. Sweeney—for Government—Cross

Q. See if I can get the arrest part straight. Was there a detective along? A. There was.

Q. Where did you meet the detective? A. I can't tell you. I don't know whether we went to the station house before 7 in the morning or whether we met him enroute.

Q. Did you have a date to meet him enroute some place? A. I couldn't tell you that, sir. I wouldn't have made that arrangement.

Q. Is it possible? I am just seeking in- (702) formation on that. A. It may well be.

Q. Is it possible that you took, you and Sershen took Mishel to the 42nd Squad in the Bronx where you met whatever detective made the— A. I don't think so. I am pretty sure we came direct, after we fed him in the morning we took him directly to our office. That is the best of my recollection.

The Court: If you are going to another subject we will take a five-minute recess now.

Mr. Rosenblum: All right.

(Jury retired.)

Mr. Rosenblum: May the witness be asked not to discuss the case with anyone during my cross-examination?

The Court: All right. Don't discuss the case.

(Short recess.)

(703) (Jury in box.)

Q. Mr. Sweeney, I notice that on several occasions you said that Mr. Sershen asked Mr. Miller for a description and he did not get one? A. That's right.

Q. About how many times would you say he asked for that description? A. I think he asked him twice.

Q. You mean even after you say Miller took the position that the man was at the door of the bank you still— or Mr. Sershen still asked again for a description?

Mr. Hallinan: I am sorry. I will have to object to the inclusion of the word "door." I do not think that was the witness's testimony. He was at the front of the bank, your Honor.

Mr. Rosenblum: May I ask the witness?

Q. Didn't you say he was at the front of the bank? A. I said that Mr. Miller said.

Q. Mr. Miller said he was at the front of the bank? A. That's right.

Q. And you were so informed, as was Mr. Shershen; (704) is that right? A. Yes, sir.

Q. So that in effect what you are saying is that Mr. Miller said that he did not see the man? A. That's true.

Q. You seem to be hesitating. What is it? A. No. I am trying to weigh your question.

Q. I see. You say that is the fact, then? A. That is what Mr. Miller said.

Q. And even after you were told by Mr. Miller that he did not see the man, you and your brother agents still asked him for a description? A. Yes, sir.

Q. Isn't it because he told you that he didn't see the man and that is why you were asking for a description? A. No, sir.

Q. Isn't it a fact Mr. Sershen got angry when he did not like the description that Mr. Miller gave him? A. No, sir, no, sir.

Q. Were you there at the time when——

Mr. Rosenblum: I do not intend to walk down.

Q. Do you recall whether or not at one time (705) during that conversation on October 10 Mr. Sershen said to Mr. Miller, "Now that we"—withdraw that.

"The description you gave is not a good description"; did that ever occur? A. No, sir.

Q. That he did not think it was definite enough or helpful enough? A. No, sir.

Q. Did you hear him say that "Now that we have the man"— A. No.

Q. You don't know what I am going to say. You are shaking your head no. A. It doesn't matter what it is. That point is wrong.

Mr. Rosenblum: Would you read what I said, Mr. Stenographer?

(Record read.)

Q. You say you did not have the man, Mishel?

Mr. Hallinan: No.

Q. You had a man, didn't you?

Mr. Hallinan: I will object to this. It is not a true characterization of what he did say.

Mr. Rosenblum: I will change the form of the (706) question to save time.

Q. Isn't it a fact that you and Mr. Sershen told Mr. Miller that you had taken a man into custody? A. No, sir.

Q. You did not tell him at all? A. No, sir, not that I recall.

Q. Try to think hard, will you? A. I am thinking very hard, and my answer is no, we did not tell him, to the best of my knowledge.

Q. You were there, weren't you? A. Oh, I was there.

Q. And wasn't this discussed by you with Mr. Hallinan and Mr. Sershen before you took the stand? Wasn't this point covered? A. I don't quite know what you mean on that.

Q. I will change the question. If you do not understand my question, tell me. I prefer to change it.

Edward F. Sweeney—for Government—Cross

During the occasions when you discussed this matter with Mr. Sershen and Mr. Hallinan, either one or both, didn't the question come up as to whether or not Mr. Miller was advised as to whether you had arrested Mishel? A. No, sir.

(707) Q. That was never raised at all? A. No, sir.

Q. How many times have you spoken with Mr. Hallinan? A. Twice.

Q. Since that day— A. Twice.

Q. And how many times did you speak to Mr. Sershen about this case? A. Once, I think; once about the case, once that he informed me that it was coming up for trial, which we had no conversation about it.

Q. Did you go to see Mr. Miller after you had—you or Mr. Sershen—when I say you I mean you or Mr. Sershen or both—arraigned Mr. Mishel in this building before a United States Commissioner? A. Yes, on October 10.

Q. I am referring to October 10 in these questions. A. Yes, sir.

Q. That is, you went up to see Mr. Miller? A. Yes, sir.

Q. And you say now that you cannot tell us either way excepting that your best recollection would be that you do not think that Mr. Miller was told at the (708) time that Mr. Mishel had been arrested? A. Not to my knowledge. I didn't hear it mentioned.

Q. Did you discuss with your brother agent Sershen the fact that you would not advise Mr. Miller— A. No.

Q. —about the arrest of Mr. Mishel? A. No.

Q. Did you and he agree that it should be kept secret for a time? A. No, sir.

Q. Can you give us any reason why he was not told that Mr. Mishel had been arrested? A. I will have to give you a personal opinion. That wouldn't have any bearing on the case.

Q. If it is just personal and if it is not factual I won't ask you for it.

Can you tell us whether Mr. Miller's desk was at a point where you could see the door, that is, not see it but within a matter of, say, 20 feet from the door to the bank, the door through which you enter to come into the bank? A. I believe it was, sir. I think it was over on the left side of the bank quite some way back.

(709) Q. About how many feet would you say? A. I hesitate to give you a guess at this time.

Q. What is your best guess? A. I would say 25.

Q. About 25 feet? A. About; maybe a little more.

Q. Approximately? A. Maybe a little more. I do not now recall exactly where it was.

Q. While you were there did you notice whether it was a busy little bank, a lot of people going in and out? A. I think at the time of day I was there that it wasn't too busy.

Q. What time of day were you there? A. I would say it was before noon, to the best of my knowledge.

Q. Will you tell us just what Mr. Miller said in connection with his knowledge that that person that you were questioning about, whatever his name was at the time, was at the door? A. No, it was Mr. Miller that brought up the topic that there was an individual with Mishel at the time who remained at the front of the bank.

(710) Q. And Mishel also remained at the front of the bank? A. No, sir. To the best of my knowledge, and if I recall Mr. Miller's statement, Mr. Mishel was seated at Mr. Miller's desk at the time that the individual was supposed to be in the front of the bank.

Q. What did he tell you as to why he knew or believed that that individual was supposed to be at the front of the bank? A. I don't know.

Q. There was conversation there, was there not, between you and Sershen and Miller? A. He said for the most part when asked if he had—offer a description of it, he said he had not seen him.

Q. Did he say how he knew that the man was at the front of the bank? A. He didn't state.

Q. You are sure of that? A. Positive.

Q. And you, as an agent, with experience at that time of 12 years, did not ask him how he knew the man was there? (711) A. Mr. Sershen did most of the questioning.

Q. Did Mr. Sershen ask that in your presence? A. I don't recall him asking that question, no, sir.

Q. Did you suggest to Mr. Sershen that he ask the question so that you could determine how Mr. Miller knew that someone was at the front of the bank, at the door? A. Well, we would have had to take that for granted at that time.

Q. You would have had to take what for granted? A. That Mr. Mishel had informed Mr. Miller that the individual—that that was the thought that he was trying to convey to us.

Q. But he did not say it, you say? A. No, sir.

Q. Now take a look in back of you, please, Mr. Sweeney. Just one moment. Will you turn around, please?

Mr. Rosenblum: Might I for the moment cover something?

The Court: Go ahead. Put a piece of paper over anything you want. You can take some scotch tape there, if you want.

(712) Q. As you come into the bank, was Mr. Miller's desk on the left-hand side or the right-hand side, as you come in? A. I would say, sir, as best I can recall now, it was on the left-hand side.

Q. On the left-hand side? A. I would say so, sir.

Q. All right. Would you turn around, please, Mr. Sweeney? Do you realize here (indicating) it says, "Entrance" on 48th Street. Do you recall that the entrance was on 48th Street? A. Yes, sir.

Edward F. Sweeney—for Government—Cross

Q. Can you tell us about how far from the front of the bank was Mr. Miller's desk? A. I am afraid it would merely be a guess.

Q. You don't have any firm recollection? A. No, not at this time.

Q. Then I won't press you. Now, I will show you this exhibit. Take a look at this thing. It has been testified to here by witnesses that Mr. Miller's desk is about here (indicating), at the place where the word "Miller" appears, and the entrance to the bank is at this point, here, 48th Street. You say that Mr. Mishel—he said Mr. Mishel was sitting at his desk, is that right? (713) A. I believe that was what he had said.

Q. Can you tell us whether or not from the desk, where it appears here, where—were you at his desk at the time? A. I sat at his desk and I think he referred to he was in the same seat.

Q. Do you recall whether the distance to the front was this distance as indicated here, and I think the testimony has been that it was a quarter of an inch——

Mr. Hallinan: The scale is right above there.

Mr. Rosenblum: I see the scale but I don't know how to read it, frankly.

Mr. Hallinan: The entire scale is thirty feet, I believe.

Mr. Rosenblum: Thirty feet.

Q. You see the scale on top.

Mr. Hallinan: From zero to 30.

Q. From zero to 30 represents a distance of 30 feet. So you can see if you applied that from the point that Mr. Miller's desk had been to 48th Street you could tell approximately how many feet it would be from. A. I do not now recall other than the fact—I do recall that there

was glass cases were over here (indicating) that the tellers are in, and I think that (714) we talked to the bank guard about here (indicating), and one of the other tellers was in here (indicating).

Q. Do you recall whether or not something was said either by you or Mr. Shershen with reference to the distance that separated Mr. Miller and Mr. Mishel from a person who was, who you say Mr. Miller said was supposed to be at the front door to the bank? A. Toward the front of the bank were the words.

Q. Toward the front? A. Yes.

Q. In other words it might not be at the front? A. It could be here, it could be here (indicating). That I don't know. There wasn't any statement.

Q. Do you recall definitely that the word "toward" was used? A. Yes.

Q. Now, you say that some redemption forms, slips, were produced at the time you were there. A. Yes, sir.

Q. From that you got the name Young, is that right? A. That is—yes. Well, let me not say that, because Mr. Shershen had photostatic copies prior to the originals being shown by Mr. Miller.

(715) Q. And you say as a result of the fact that some of these slips had the name Young on it that you went down to Roth's Grill to look for a man by the name of Young? A. Yes, sir.

Q. And that was the person who was supposed to own the bonds? A. I can't tell you that, sir.

Q. Well, you can't tell us now that from that conversation you had with Mr. Miller and Mr. Sershen whether the name Young was the name of the person who owned the bonds? A. No, I am not saying that at all. I at the time did not know why the name of Young was contained on the redemption slips.

Q. Was something said about the fact, while you were at the bank with Mr. Miller and Mr. Shershen, was some-

thing said about the fact that the name Young—was something said about the name Young? A. Yes.

Q. What was said about it? A. Mr. Shershen had informed me, I think prior to entering the bank, concerning the name of Young.

Q. What did he tell you about Young? (716) A. He told me at that time that the account was—oh, what can I say—was O. K'd by a Young or was guaranteed or some such thought as that, and the name was contained on a few of the redemption slips.

Q. You say the account was guaranteed by the name Young. What account was guaranteed by the name Young? A. Well, I am not trying to weigh words, sir, and I may be conveying a bad impression with you on this score. But, however, my personal opinion now I would have to express because I don't know exactly and I don't think that——

Q. Is what you are about to say a fact or is it just opinion? A. It would be more of an opinion. I did hear something——

Q. Then I am not going to ask you for your opinion because I would like to get facts if we can.

You knew, did you not, from what you have told us, that the person who brought in the bonds you say was Mr. Mishel? A. No, that is what Mr. Miller said.

Q. You knew that Mishel had something to do with this, didn't you? A. Yes, sir.

(717) Q. Then what did you understand Mishel had to do with it? A. I understood that he was the negotiator of the bonds.

Q. And he brought them in to Mr. Miller? A. That is right.

Q. Right? A. Right.

Q. And you say at the time he brought them in he had another person with him who was at the front of the bank,

towards the front of the bank? A. I am merely stating what Mr. Miller informed us.

Q. Now, did you look at the redemption forms on the occasion when you discussed them with Mr. Miller in the presence of Mr. Sershen or Mr. Sershen discussed redemption forms in your presence? A. No, sir, I didn't.

Q. Hadn't you seen them before? A. No, sir, I had not. Mr. Sershen informed me he had them and he was going to talk to Mr. Miller concerning them.

Q. I see. But he didn't show them to you? A. No. If he did, I don't recall it.

(718) Q. Could you tell us which it is, please? Let me show you these bonds and redemption forms and see if they refresh your recollection. I show you Government's Exhibit 1-A to and including 8-A and ask you to look at them by picking up the identifying mark, the slip put on by the clerk. I show you, first, 1-A. A. In order to save time, sir, I would say that if I did examine them they wouldn't mean anything to me because I didn't examine them at the time that I was in the bank.

Q. You mean you examined them before? A. No, I did not. I knew that Mr. Sershen had photostatic copies of these but I didn't look at these nor did I see these.

Q. Did you see them when you were at the bank? A. No, I didn't see them.

Q. Did you see that they were sent for? A. No, I didn't see them. I thought, the best of my recollection now is that they were on Mr. Miller's desk.

Q. You mean at the time you came in they were on Mr. Miller's desk? A. Wait, just a minute. I am a little hazy on whether he sent for them or whether they were on his desk. (719) I wouldn't be able to at this time tell you whether they were on the desk or whether he called someone that had them brought to his desk.

Q. Had you or Mr. Sershen, to your knowledge, advised Mr. Miller that you were calling upon him that day?

A. No, sir, I didn't. Maybe Mr. Sershen had; I would not know that.

Q. Did he tell you whether he had or not? A. No, sir.

Q. You were with Mr. Sershen from early that morning, 7 o'clock, when you picked up Mishel? A. No, no.

Mr. Hallinan: Two different dates, your Honor.

Mr. Rosenblum: I am sorry. I have the dates wrong.

Q. On the 10th, what time did you meet Mr. Sershen? A. I was with him in the office at 8.30 in the morning.

Q. And did you stay with him? A. I wouldn't—I probably didn't actually go with him until sometime after 10.30, and I think we went directly to the bank. That is to the best of my (720) recollection now.

Q. Would you recall whether you had any discussion with Mr. Shershen with regard to the visit to Mr. Miller? A. The previous visit he had, you mean?

Q. No, the visit you are about to make. A. No. We were just going up to see Mr. Miller, that was all.

Q. And had you discussed the fact that Mr. Shershen had previously visited with Mr. Miller? A. Yes, sir.

Q. And you say when you came to the bank you don't recall whether these very redemption slips which I have just shown you were on his desk or he sent for them? A. No, sir, I do not now recall that.

Q. Well, tell us what was said by either Mr. Miller or Mr. Shershen for the first time in connection with these redemption forms. A. Well, they entered into the discussion in the course of the conversation, to the best of my knowledge, and they were produced by Mr. Miller.

Q. What was said? Tell us, please. A. Oh, I can't recall that, sir.

Q. What was said, if you can recall, or the (721) substance of what was said which led to their being pro-

duced by Mr. Miller? A. Mr. Sershen had inquired of Mr. Miller if he had any information concerning this Mr. Young.

Q. Yes? A. And it could well be that then, and on this I am not sure of, that Mr. Miller probably produced these slips at the time.

Q. Will you tell us whether while you were there these slips—when you say produced, what do you mean? He took them out of his desk or sent for them? A. Well, that is what I previously testified; I could not recall exactly whether they were sent for or whether they were on Mr. Miller's desk.

Q. At the time you came in they either could have been on his desk or he may have sent for them? A. As far as I am concerned, that is true.

Q. And they were discussed by Mr. Sershen and you and Mr. Miller, with Mr. Sershen, I assume, carrying the bulk of the conversation, is that right? A. That is correct, that is true.

Q. And at the time you saw these redemption forms? A. They were produced—or let me say they were picked up by Mr. Miller and shown to Mr. Sershen, the (722) originals.

Q. Were they shown to you also? A. Well, I was there, but I did not examine them.

Q. Didn't you see the name Chernoff right on the top one? A. I could well have, but it doesn't mean anything to me, again.

Q. Did it mean to you that the name Chernoff represented the name of the person who was supposed or who was the owner of the bonds? A. That is apparent to me that there were bonds lost, reported lost filed and an affidavit executed by the bond owner.

Q. Did you see it? A. No, sir, I did not.

Q. You knew they had to be in some name? A. Exactly.

Q. Those bonds; is that right? A. Exactly.

Q. You are acquainted with a redemption form, are you not? A. In all banks.

Q. You are acquainted with them? A. Yes, sir.

(723) Q. Your job or work as a secret service agent is to make investigations concerning violations of a particular type which concern themselves with the Treasury Department, isn't that so, in substance? A. Yes.

Q. I know there are other duties. But that at least is one of your duties, isn't that right? A. That is right.

Q. So you are acquainted, or are you acquainted with redemption forms? A. Yes, sir.

Q. And do you know that on a certain line of a redemption form is supposed to appear the signature of the person in whose name a bond is issued and which is supposed to be the same name placed on the redemption form at the time the bond is cashed? You knew that, did you not? A. Yes, sir.

Q. So that when these redemption forms were produced using the word as you have told us, what you thought it meant to you, you saw the name Chernoff, did you not? A. I did not examine the slips.

Q. Was there anything said about the name (724) Chernoff when you first came in, before the slips were sent for? A. Only the fact that Mr. Miller had stated he recalled Mishel presented bonds to him which contained the name Chernoff.

Q. That was right at the beginning? A. That is right.

Q. So you heard the name Chernoff then? A. Yes, sir.

Q. You knew then that the bonds in question were bonds which had been issued in the name Chernoff? That is all I am trying to establish. A. Yes.

Q. All right. Now, do you recall whether or not Mr. Sershen told you that he knew Mishel before the arrest took place?

Edward F. Sweeney—for Government—Cross

Mr. Hallinan: I object to this on the grounds of relevancy, your Honor.

Mr. Rosenblum: I am leading up to something.

Mr. Hallinan: I know.

The Court: I will let him answer. Go ahead.

A. Would you repeat the question?

Q. Yes. You and Mr. Shershen went up to take a man into custody; you knew the man's name was Mishel; (725) you had never seen him before; right? A. That is right.

Q. Did Mr. Shershen tell you whether he had ever seen him before? A. No, he didn't.

Q. You had a picture of him, didn't you, to know who you were picking up? A. No, sir, we had no picture that I know of.

Q. You mean you had none? A. I had none.

Q. Do you know whether Mr. Shershen had one? A. I don't believe he did.

Q. Did he tell you? A. I didn't ask him.

Q. No, no. Did he tell you the description of the man he was going to pick up? A. No, sir.

Q. Isn't it normal in your routine, investigations and, in particular, at the time of an arrest, when you go to pick up a man who you have never previously seen, to either have a picture or a description of him? A. Sometimes, if one is available; more times than not we don't.

Q. What did Mr. Shershen tell you about Mishel's (726) prior history which indicated to you whether there was or was not a picture available? I am only interested in the picture.

The Court: I think you have gone far enough on that. Let us get back to the issue in the case.

Q. Would you say definitely now that when you came into the bank to see Mr. Miller that Mr. Sershen didn't

show him the picture of Mishel? A. I would say that, yes, sir.

Q. Or would you say that you are not positive of that? A. No, I would say he didn't show him a picture.

Q. Would you say that you had no discussion with Mr. Shershen as to whether he did or didn't have a picture? A. No, there was no discussion at all.

Q. During the time while you were in the Pennsylvania Exchange Bank on the occasion that you told us about, were you at all times present with Mr. Sershen when he talked with Mr. Miller? A. Yes, sir.

Q. You did not have any other duties to speak to anyone? A. No. I did go with Mr. Sershen. I think he talked to the bank guard, whose name now eludes me.

(727) Q. But that was in your presence? A. That's right.

Q. You said before that you knew that the name Sershen came up as being the name on the bonds which were cashed? A. Chernoff.

Q. Chernoff. Excuse me. Right? A. Yes.

Q. Then the name Young came in; right? A. Yes.

Q. Now, isn't it the fact that you were trying to locate the person who Mr. Miller told you was represented to him by the name of Chernoff? A. No, sir.

Q. You were not? You did not go to Roth's Restaurant to see whether— A. Yes.

Q. I know you went. You told us that. A. Yes.

Q. You did not go to Roth's Restaurant to determine whether they had an employee by the name of Chernoff? A. No, sir. We went there to ascertain if we could locate an individual by the name of Young.

Q. Young? (728) A. Yes.

Q. And who did you understand Young was supposed to be in this transaction? A. I didn't know and I still don't know.

Q. You said something using the word near the end

of your testimony, and I don't think I got all of it down in my notes here, about documentation; do you remember? A. Yes.

Q. Will you tell us that again, please? A. It was pertaining to documentary identification or documents that would identify the individual as the true owner of the bonds.

Q. You knew, did you not, as a Treasury Agent, that there were several ways by which an owner of bonds could be identified? A. Yes, sir.

Q. Isn't that right? A. Yes, sir.

Q. And one of the ways by which a person could be identified is if he produces satisfactory documents, documents which satisfied a bank that he was the person who owned the bonds he was presenting if he wanted bonds cashed?

(729) Mr. Hallinan: I will object on the grounds of relevancy, your Honor.

The Court: I will sustain the objection.

Mr. Rosenblum: Exception.

Q. Was that the only means of identifying an owner of bonds, that is, by documentation? A. No.

Mr. Hallinan: I will object to this on the grounds of relevancy. It is the same question put another way.

The Court: I will sustain the objection.

Mr. Rosenblum: Exception.

Q. Was there any means acceptable to the Department of identifying a person who wanted bonds cashed by accepting the identification from a customer of a bank? A. There are several means, sir.

Q. Was that one of the means? A. And the acceptable means is that--first, probably the most acceptable means

is that the individual have an account at the bank where the bonds are being negotiated, or that he be personally known to either the bank officials or the teller.

Q. From your contact with this case and whatever (730) you learned about the case, did you know whether or not Mr. Mishel had an account at the Pennsylvania Exchange Bank?

Mr. Hallinan: I will object to this on the grounds of relevancy, your Honor. May we approach the bench?

The Court: Surely.

Mr. Hallinan: I will say it.

The Court: I will sustain the objection and let you say anything.

Mr. Rosenblum: Exception.

I have no further questions.

The Court: Do you have questions?

Mr. Hallinan: Just one.

Redirect examination by Mr. Hallinan:

Q. Agent Sweeney, in response to Mr. Rosenblum, several of his questions, you testified that you went over this case with me and you went over it with Agent Shershen.

Did you also go over the report prepared by Agent Shershen in October, 1950? A. I did, sir.

Mr. Hallinan: I have no further questions.

(731) Mr. Rosenblum: I assume you have that report here, Mr. Hallinan.

Mr. Hallinan: Yes, indeed.

Mr. Rosenblum: May it be marked?

Mr. Hallinan: It may be marked and you may have it right now, if you wish it.

(Defendant's Exhibit B for identification marked.)

Mr. Rosenblum: You are so magnanimous it makes me suspicious.

Mr. Hallinan: Do you want to look at it?

Mr. Rosenblum: I like to look at anything.

The Court: Do you want to keep this witness?

Mr. Hallinan: Yes. I imagine Mr. Rosenblum does.

Mr. Rosenblum: Do you have a photostat of this for me, if you are that kind?

Mr. Hallinan: I will ignore that remark.

Mr. Rosenblum: May I have a photostat?

Mr. Hallinan: Yes.

Mr. Rosenblum: I won't be able to finish this. It is several pages. I would like to read it as carefully as Mr. Hallinan insists he wants me to read it. If I may have a photostat—it is 25 after.

(732) The Court: Do you have any more questions of this witness?

Mr. Rosenblum: I might have after I read the report.

The Court: All right. They want you back tomorrow, Mr. Sweeney. We will see you at 10.30.

Ladies and gentlemen, I will excuse you until tomorrow at 10.30.

Mr. Rosenblum: May the same admonition——

The Court: Don't discuss the case.

Don't you discuss the case either, Mr. Sweeney.

(Adjourned until October 25, 1956, at 10.30 o'clock a. m.)

(733)

New York, October 25, 1956;
10.30 o'clock a. m.

Trial resumed.

Mr. Rosenblum: May I bring one thing to your Honor's attention?

The Court: Sure.

Mr. Rosenblum: Yesterday when the witness Levy—your Honor will undoubtedly recall, first, that Mr. Hallinan stated that I was making remarks that the jury could hear.

The Court: Yes.

Mr. Rosenblum: Yesterday when the witness Levy stated that his client was the Pennsylvania Exchange Bank and not Mr. Miller, Mr. Hallinan said, "That son-of-a-bitch," loud enough so that Mr. Rooney could hear it. I could hear it and later when I talked to Mr. Malinky I said, "You will lose a bet when you say Mr. Hallinan never swears."

I bring it out because if we can hear it the jury can hear it.

Also I think you will see throughout his (734) grimaces sitting there.

Mr. Hallinan: Just a minute.

The Court: He has not. I have been watching him. What he says that I cannot hear you can tell me about, but I can see his face pretty well. So I do not remember any grimaces.

Mr. Hallinan: May I be heard on this just briefly, your Honor?

Mr. Rosenblum: I have one other point. When the witness is being examined, "Now raise your voice" and "Now make it real loud." You can see it right in the minutes when it comes to a certain point. "Now make it real loud" or words to that effect. It should not be done. I do not try to do it.

The Court: As a matter of fact, I really think that it has been a very clean trial that way. Both of you have, within the limits of human exasperation, done your best.

I think also that it is very good for both of you and for your respective parties that you do, because from what I have seen of these juries any maneuvers to the other extreme hurt rather than help. I did not know anything about that. I was going to speak myself for a moment to you.

(735) One of the things that Mr. Hallinan has done twice is offer you reports in front of the jury. I do not know whether you have asked for any in front of the jury. This happens quite frequently. It is not an unusual thing, but I would caution you again not to do it. If you want to offer something, come up and tell me about it; and if you want something, come up and ask me for it.

Mr. Hallinan: He did ask for that statement.

Mr. Rosenblum: Let us get the sequence of it. After I finished Mr. Hallinan got up and asked a question. He said, "You testified you refreshed your recollection as to what you have testified about. Did you also use a report which was prepared?"

So I simply said, "May I see it?"

I have a right to see anything the witness saw. The answer was, "Yes, indeed," as though—I do not intend to use it. I do not intend to question this witness any further. This jury will now think there is something in that report—I had a right to ask to see anything he used to refresh his recollection.

Mr. Hallinan: I made it available, but the rule under the Goldman case, 316 U. S. 329, is if the (736) person uses it off the stand to refresh his recollection, they are not entitled to it, but I did

not want to get technical and I made it available to Mr. Rosenblum.

The Court: That is all to the good. I do not think any incident in itself is worth commenting on and probably if I had less astute counsel on both sides I would not comment at all, I would figure it would better to go ahead and let you do whatever you are doing instead of trying to suggest any improvement; but I do think the trial dragged a little yesterday. I think the jury is going to be sooner or later concerned to complete this case, which is running a little bit longer than the two or three-day case.

Mr. Rosenblum: We expected it to be a two or three-week case, and I think we will complete it much faster than that.

The Court: That is all right. I say I would not do those little things which take time unnecessarily, and over a longer trial these little exchanges between counsel become tiring rather than interesting to the jury, I think. So I would cut it out.

(737) Mr. Rosenblum: For instance, this morning I say to your Honor I am not going to question this witness any further unless Mr. Hallinan does. I prefer nothing is said, "Do you want to examine this witness" or anything like that.

Mr. Hallinan: I won't. Unfortunately, I did let Mr. Malinky down. He thought I had certain attributes which he discussed and he lost a bet. I did discuss this with Mr. Rooney in the corridor. I said, "Did you hear me?"

He said "No, I did not hear you but I read your lips."

Mr. Rosenblum: I heard you.

The Court: You were not facing the jury?

Mr. Hallinan: No, I was facing Mr. Malinky.

Colloquy of Counsel

The Court: I think it is best to be professional about these things and conceal your thoughts, if you can.

Mr. Hallinan: I try very hard. I lost my head.

The Court: All right.

Mr. Hallinan: You are through with Mr. Sweeney?

Mr. Rosenblum: Yes.

(738) The Court: Next witness, then.

Mr. Hallinan: Your Honor, as of now I have one witness out there. And one other was told to be here at a certain time and he has not shown up as yet. Agent Sershen is the third witness, and then I am through, I will rest; I expect to rest some time today, depending on how things go.

Agent Sershen is heading or one of the heads of the detail for the President this morning, so he won't be available until—I told him to be in my office as close to one o'clock. So we may run short. I may have to locate that other witness for this afternoon also, the one who is not here yet.

May I check and see if he is here now?

The Court: We can get the jury in anyhow, can't we?

(Mr. Hallinan left the room and returned very shortly.)

Mr. Hallinan: Just one is here. The other has not shown up.

The Court: All right.

(Jury in box.)

(739) SAM SIEGEL, called as a witness on behalf of the Government, being duly sworn, testified as follows: Direct examination by Mr. Hallinan:

Q. Mr. Siegel, by whom are you employed? A. United Cutlery & Hardware Products.

Q. In what capacity are you employed by them? A. Salesman.

Q. You will have to keep your voice up now. How long have you been employed by them? A. Two years.

Q. Now, Mr. Siegel, have you ever been convicted of a crime? A. Yes.

Q. When was that? A. 1953.

Q. What was the crime? A. Forgery of bonds.

Q. Did you plead guilty to that crime? A. Yes.

Q. And what were you sentenced to? A. Two years' probation. I pleaded guilty and I was sentenced to a two-year probation.

Q. Now do you know Irving Mishel? (740) A. Yes.

Q. Were you at one time employed by him? A. Yes.

Q. Can you tell the Court and jury when that was, please? A. Between 1948 and '50.

Q. Now what did you do for Mr. Mishel in your employment? A. An errand boy.

Q. In that capacity did you run errands for him to the Pennsylvania Exchange Bank? A. Yes, sir.

Q. Did you ever bring anything to Mr. Miller on the instructions of Mr. Mishel? A. Yes.

Q. What was that? A. Envelopes.

Q. How many times did you bring envelopes down to Mr. Miller for Mr. Mishel? A. Say about half a dozen.

Q. What was in those envelopes? A. Theatre tickets and money.

Q. How many times was money in the envelopes? A. I would say about three or four times.

(741) Q. Now when you brought them down to Mr.

Miller what did Mr. Miller do with these envelopes? A. Put them inside his coat pocket.

Mr. Hallinan: You may inquire.

Mr. Rosenblum: May we approach the bench?

(The following proceedings took place at the bench without the hearing of the jury.)

Mr. Rosenblum: I believe your instructions to us were if we could realize in advance that we should limit our testimony produced to relevant matters. Now I can't see the relevancy of this testimony. Based upon what I know of the testimony given by the other witnesses and the issue in the case I don't see the relevancy of this.

Mr. Hallinan: This goes to the heart of the relationship between Mishel and Miller. The witness Mishel has testified that one of the ways he used to Miller for these stiff accounts was to put money in an envelope and send his messenger boy down to Miller with it. I think this goes to the very heart of this case. We are charging Miller with making a false statement, and I think bringing out the conditions in the circular letter that have to be met, to put it as conservatively as possible, (742) demolishes any claim that he knew that this person was a person of integrity and——

Mr. Rosenblum: It has nothing to do with the false statement.

Mr. Hallinan: It has plenty to do with it.

The Court: In other words, Miller had no basis for writing a letter upon anything that Mishel told him because he knew Mishel was a dishonest person who was dealing in stiff accounts.

Mr. Hallinan: And receiving money for it.

The Court: And receiving money for it.

Mr. Perry: The charge would be whether or not

these statements were false, but we do seem to be getting away from that and now it is really a character assailment, it seems to me. If Miller were charged, for example, with being in cahoots with Mishel, then he could say it is relevant, that he was in cahoots with Mishel.

The Court: They say they don't have to prove he was in cahoots with Mishel, but by proving it they establish the very best possible proof that Miller knew Mishel was not a person of reliability and integrity whose introduction of a bond payee was worth anything.

(743) Mr. Perry: It seems to me we have this problem, since the whole area of the case has been opened by the few first witnesses Mr. Hallinan put on, I think our cross-examination of Mishel was unduly curtailed in view of the Government's presentation of its case.

Mr. Hallinan: No.

Mr. Perry: That we should have been able to spread the area.

Mr. Rosenblum: We should.

Mr. Perry: There are some items, Judge, which we have on the very best of information that Mishel flatly was lying. The impression that I got, and I was not present at all at these bench conferences, the impression I got, you at one time had indicated to Mr. Rosenblum that some of these matters were collateral and that you wouldn't permit us to show he was lying, and we are now at a very serious disadvantage.

The Court: You want to keep in mind what you can put in as a defense from what you can put in as cross-examination addressed to direct testimony brought out by the Government. I went over your offer of proof, but is there anything in it that you

(744) didn't have in it that you wanted to call my attention to?

Mr. Perry: For example, your Honor, I would like to be in a position to say to you that I have checked so that I could actually tell you what the fact is, but my information, your Honor, which I think is sound, is that Mishel's story about the vaults is untrue.

Mr. Hallinan: I didn't hear that word.

The Court: That his story about the vaults is untrue. That was developed on cross-examination, not on direct.

Mr. Perry: Judge, I would have to examine the minutes to see just where this fits in.

Mr. Rosenblum: Even if it was, it followed after Mr. Mishel said that they had moneys together in which they had an interest.

Mr. Hallinan: He never testified to that.

The Court: You check the minutes. I think you will find that that all came out on cross, that on direct he testified that he had stiff accounts, the payments for the stiff accounts and the occurrences on the days the bonds were cashed——

Mr. Perry: I didn't mean to interrupt you. (745) There is one thing that does not fit in with that. If that were the Government's theory of the case and developed through the witnesses as their theory, then I say there is absolutely, in my judgment, no reason to go into the incident with Gallagher. This business of having met with Gallagher——

Mr. Hallinan: That is the starting point in the story.

Mr. Perry: Once you start something it seems to me we should be able to pursue it and see where we go from there.

Colloquy of Counsel

The Court: All I am saying is, keep in mind the difference between cross and the defense. If you want to put in anything as to defense we can cross that bridge when we get to it.

Mr. Hallinan: I should like the record to indicate, in response to one of Mr. Rosenblum's statements, or Mr. Perry's, that cross-examination was unduly restricted, that Mr. Rosenblum was allowed complete latitude in raking Mishel over on when the money for the stiff accounts was paid, the amounts of the money, and he hammered at him time and time again in that area. And if I recall on the direct testimony (746) there was no objection to that testimony coming in.

The Court: I think that there has been a fairly consistent pattern followed here and I will take this testimony.

Mr. Hallinan: In furtherance, I might say that we didn't develop all of the areas in which Miller and Mishel had, which I thought would be relevant, but I just wanted to get enough in there to show what the relationship was. Also, from the Government's viewpoint, they talk about this, they have this information and that information, and we could have extended the testimony way beyond what we offered on the relationship between these two.

The Court: I can see that we get into a defense in respect to that.

* * * *

Mr. Hallinan: Your Honor remembers I made that for the sole purpose of putting them on notice if they wanted to go into the background of some other individuals that that is what we had.

Mr. Rosenblum: We will move for a mistrial based upon the information which we just discussed with you at the bench.

Motion for Mistrial—Denied

Samuel Siegel—for Government—Cross

The Court: On the background?

Mr. Rosenblum: On the testimony which has been elicited from this witness at this time with reference to this.

The Court: I will deny your motion.

Mr. Rosenblum: Exception.

(The following proceedings were held in the hearing of the jury.)

Cross examination by Mr. Rosenblum:

Q. Mr. Siegel, we have spoken with each other (748) by telephone? A. That is right.

Q. I asked you to come to my office? A. Pardon me?

Q. I asked you to come to my office? A. That is right.

Q. You said you would have to speak to Mr. Hallinan? A. That is right.

Q. And then you said you wouldn't come? A. Pardon me?

Q. You said you wouldn't come? A. I had told you I wouldn't come before I had spoken to Mr. Hallinan also.

Q. Then I spoke to you after that? A. Yes.

Q. You still didn't? A. That is right.

Q. In connection with this testimony you just gave in reference to the delivery of envelopes, when for the first time did you tell that to any law enforcement officer? A. I believe that was told to Mr. McAvinue.

Q. About how long ago was that? (748a) A. It was the time that I was arrested.

Q. You say at the time of your arrest? A. Approximately at that time.

Q. Or was it after your conviction? A. I would say it was before my conviction, during the time that I was going up to Mr. McAvinue's office.

(749) Q. So it would be before the time you pleaded guilty to the crime; is that right? A. I would say so, yes.

Q. And that would be, then, about what year—19 what? A. It would be about '52, approximately that time.

Q. Approximately 1952? A. Approximately that time.

Q. Now, you say that about a half dozen times you brought down envelopes; is that right? A. That's right.

Q. Were they open or closed? A. Sealed.

Q. Sealed envelopes? A. That's right.

Q. And how many times did it contain theatre tickets? A. Pardon me?

Q. How many times did it contain theatre tickets? A. I would say about two or three times.

Q. So that either three or four times you say it contained money; is that right? A. That's right.

Q. Did you know Mr. Miller well at that time? (750) A. Did I know him well? No, sir.

Samuel Siegel—for Government—Cross

Q. You say you were giving Mr. Miller an envelope that he put in his pocket? A. That's right.

Q. Did you tell that to Mr. McAvinue? A. Pardon me?

Q. Did you tell that to Mr. McAvinue? A. I couldn't say whether I told it to him at that time it was put in his pocket or what.

Q. When for the first time did you tell it to anyone that Mr. Miller put an envelope in his pocket? A. It was the time that I was being questioned. I couldn't give you an exact time on it.

Q. Did you tell it to Mr. Milenky? A. It's possible I did.

Q. Was that the first time? A. Pardon me?

Q. Was that the first time? A. No, it wasn't.

Q. Who did you tell it to for the first time? A. I told you Mr. McAvinue.

Q. You do recall you told him you saw him putting it in his pocket? A. I didn't say I saw him putting it in his pocket. (751) You asked me who I told about delivering envelopes to Mr. Miller and I told you.

Q. I asked you who you told the first time about putting the envelopes in his pocket. A. I don't recall who I told it to the first time.

Q. Can you recall approximately when you told it to anyone for the first time? A. Would you want me to guess?

Q. No, I do not think we want a guess, but can you give us an approximate date that you think that you fix as the approximate time? A. It goes too far for me to be accurate and give you any specific time.

Q. You had been bringing many envelopes down to the bank, had you not, as an errand boy? A. As an errand boy, I wouldn't say many envelopes. Whoever it was told for me to give it to.

Q. Did you ever give envelopes to a Mr. Horan? A. I don't believe so.

Q. Would you say you did not? A. I would say I didn't. The name doesn't sound familiar to me at all.

Q. One of the tellers. (752) A. The name don't sound familiar to me at all.

Q. Did you know the tellers at the bank? A. I would know them by sight, a few of them.

Q. And you don't recall any teller whose name was Horan? A. No.

Q. Didn't you bring papers down, say hypothecation agreements? A. I don't know what you mean by "hypothecation agreements."

Q. Do you know whether or not you delivered a hypothecation agreement to the bank in connection with the Alpren Bonds? A. Whether I brought it to the bank?

Q. Yes. A. No, I didn't bring anything like that to the bank.

Q. Did you read every paper that was brought down to the bank? A. No, sir.

Q. For how many years were you working as an errand boy? I am only using the expression you used. A. That's right.

Q. I am not using it any other way. For how (753) many years did you bring papers as an errand boy to the bank? A. The entire period of time I was employed by Zeneth, Mishel's firm.

Q. Zenith; is that right? A. Yes.

Q. Did Zenith have an account with the Pennsylvania Exchange Bank?

Mr. Hallinan: I will object to this area, your Honor. May we approach the bench just briefly?

The Court: Yes.

(The following proceedings took place at the bench, not in the hearing of the jury.)

Mr. Hallinan: I think your Honor allowed certain questions of other witnesses along this line on

the ground it was testing the witness' recollection. I think that this matter, in reading over the record very carefully, is very clearly defensive matter. While it might ethically be considered testing the witness' recollection, I think this doubt should be exercised in favor of the Government at this time because the most important purpose of this is defensive matter and I would want that elicited at another time.

There are too many other ways of testing (754) this man's recollection without going into this other matter where I think 90 per cent of it is going to be defensive matter rather than just testing the witness' recollection.

The Court: Is there any reason why you cannot tell me what the prejudice is to the Government?

Mr. Hallinan: Yes. On this particular matter they are going in I am quite sure—do you remember what Mr. Rosenblum mentioned on his opening statement? There were loans granted to Mishel on March 2 and March 9. The Alpren stock figures in that transaction. They are going to try to show as their defense that Mishel duped Miller by getting loans on a corporation which he no longer owned at the time.

The Court: Does the bank account of Zenith have anything to do with that?

Mr. Rosenblum: I cannot see it, Judge.

Mr. Hallinan: No.

The Court: I——

Mr. Hallinan: Yes, Zenith figures in their defense in this way——

Mr. Rosenblum: What?

Mr. Hallinan: There were various accounts at the bank which they will try to develop and show were (755) perfectly legitimate accounts and the

relationship between Miller and Mishel was that of president and client of a bank, and that is what he relied on when Mishel brought in these bonds.

I think Mr. Rosenblum can tell you that again. He did on his opening statement. They are going into the Mishel Wine and Liquor, Berkshire Wine and Liquor, Zenith account, and several other business accounts. I think 90 per cent of it is defensive matter.

Mr. Rosenblum: I do not intend to go into those questions. It is merely testing his recollection. He worked for Mishel during a certain period of time. I forget what he said, but I will ask him. Something like two years. During that time I want to show his job was to bring envelopes, papers legitimately part of the business. I want to test his recollection. I do not want any particular item. The only reason I asked the question is he said Zenith. He brought that in. That is the only reason. So I followed it up by saying he brought it to other banks and I want to show he did bring other pspers.

The Court: I will let you go along and see what happens.

(756) (Proceedings were resumed, within the hearing of the jury as follows):

Mr. Rosenblum: Please read the question to the witness.

(Last question read.)

A. Am I to answer that question?

Q. Yes. A. Not that I know of.

Q. Is an employee—first tell us, were you an employee of Zenith or were you an employee of Mishel individually or were you an employee of some other corporation? A. Well, it's a hard question to answer, but Mishel was Zenith, Zenith was Mishel. That can be my only answer to you.

Q. And at that time did Mishel also have an interest in other companies or corporations? A. I would say yes.

Q. As an employee of either the corporation or the individual, did you also deliver envelopes to another bank other than this one?

Mr. Hallinan: I will object to this, your Honor.

The Court: Sustained.

Mr. Rosenblum: Exception.

(757) Q. Tell us all the duties that you had as an errand boy for Mishel, as you described it.

Mr. Hallinan: With relation to the Pennsylvania Exchange Bank there would be no objection. This question is the same question previously put but in another form. I will object to it on the grounds of relevancy unless it is limited to the Pennsylvania Exchange Bank.

The Court: I will let it extend beyond that.

(To witness) Tell us in general terms your duties, but don't specify any transactions in which you participated except those relating to the Pennsylvania Exchange Bank.

The Witness: (To Mr. Rosenblum): Your question, please.

Mr. Rosenblum: The stenographer will give it to you.

(Question read.)

The Witness (To Court): Shall I answer it now?

The Court: Yes. Answer it in general terms.

A. Being in the category of an errand boy was for deposits and delivering of certain items to the Pennsylvania Exchange Bank and to some of his so-called friends, associates of bookmakers and things such as that.

Q. And those people were clients of Zenith? (758) A. More or less, I would say.

Q. That is, the bookmakers? A. (Witness nods.)

Q. Was it the business to loan money to bookmakers? A. He was in the factoring business.

Q. Factoring business? A. That's right.

Q. Do you know whether or not he was factoring his accounts with several banks?

Mr. Hallinan: I will object to this, your Honor.

The Court: I will sustain it.

Mr. Rosenblum: Exception.

Q. Can you tell us whether or not he was factoring any accounts at the Pennsylvania Exchange Bank? A. I can't answer that question. I don't know the answer. I couldn't answer.

Q. You don't know what the fact is; is that right? A. That's right.

Q. Can you give us a yes or no answer as to whether or not you delivered envelopes to other banks?

Mr. Hallinan: I will object to this, your Honor—relevancy.

The Court: I will sustain it.

(759) Mr. Rosenblum: May I be heard at the bench, your Honor?

The Court: Sure. Come on.

(The following proceedings took place at the bench, not in the hearing of the jury):

Mr. Rosenblum: What I intend to prove are the duties of this witness; which I think would be a basis from which the jurors can determine whether or not his testimony should be given a particular degree of weight in the light of other duties which included similar things to those things he did at

the Pennsylvania Exchange Bank. For instance, I hope to be able to prove without giving names that during the course of his employment he also brought envelopes to other banks, that that might be a basis from which the jury may say he might be confused or they may want to weigh the credibility of the witness to determine what weight they should give it. So let us assume, for instance, and I do not know the facts at the moment, he brought a thousand envelopes—this is only an example—to everyone he brought to the Pennsylvania Exchange—that is, a thousand to other banks, sealed envelopes. I think that I should be given an opportunity to test his credibility, to test his recollection, to bring out these facts from which the jury could determine whether or not they care to accept his testimony as given (760) on direct examination.

Mr. Hallinan: I think that area is pregnant with other questions that could be argued to the jury on the basis of them, such as the area they wanted to get into before, that Mishel has duped other people, he has had multi transactions with other banks, and so forth and so on.

I thing there is a great enough area in which to test this man's recollection and so forth within the area which I am seeking to limit the interrogation.

The Court: I will go along with you. I will sustain the objection on this.

Mr. Rosenblum: Exception.

(Proceedings were resumed within the hearing of the jury as follows):

Samuel Siegel—for Government—Cross

By Mr. Rosenblum:

Q. Is it your testimony that during the period you were employed by Mishel, during the entire period you delivered six envelopes to the Pennsylvania Exchange Bank? A. I would say more or less.

Q. How many more would you say? A Maybe two more, may be one less. I mean I couldn't——

(761) Q. Two more or one less? A. Approximately that figure.

Q. And you say two or three might have been with theatre tickets? A. That's right.

Q. Over what period of time do you say you delivered these envelopes? A. The time that I was employed by Mishel.

Q. And what is that period? A. From '48 to '50.

Q. That means during the three years, '48 '49 and '50, you delivered, you say, approximately six envelopes—it could be two more or one less—of which two or three had theatre tickets; is that right? A. Approximately that, yes.

Q. Is that right? A. Yes.

Q. Tell us, the first envelope you delivered, what did it contain? A. I could very easily answer that. Money.

Q. You recall that? A. That's right.

Q. That was the first one? A. That's right.

(762) Q. It wasn't a theatre ticket? A. No.

Q. When was the first theatre ticket that you delivered? A. I couldn't remember that.

Q. That you don't remember? A. No.

Q. Can you tell us in point of time how much after the time that you say you delivered money that you delivered a theatre ticket? A. I would say a few months, perhaps, a couple of months. It would be hard for me to say exactly when.

Q. Have you a recollection? A. Pardon me?

Q. Have you a recollection? A. I would say a few months.

Q. Tell us the day when you delivered the first envelope which you say contained money. A. The date?

Q. Yes. A. I couldn't tell you that.

Q. Could you give it to us by month? A. I can tell you how I delivered it and why I delivered it.

Q. Did I ask you that? (763) A. Well, that is the only reason that makes me say I remember the first envelope. You are asking me a question. I am trying to pin-point it for you.

Q. I am asking you to pin-point it in time. A. I couldn't do that for you.

Q. You cannot pin-point it even by year? A. No, sir.

Q. Not even to the extent of the year? (764) A. By the year I would say it was the time that Zenith went into existence, the year that Zenith started in business.

Q. And what year was that? A. You would know that as well as I do. I don't remember offhand. I would say it was in '48.

Q. You say I know that as well as you do? A. I shouldn't have said it. Between '48 or somewheres around that time. Perhaps it might have been late '48.

Q. And at that time was it in connection with Zenith, a Zenith account at the Pennsylvania Exchange Bank that you produced an envelope? A. I said Zenith never had an account that I know of at the Pennsylvania Exchange Bank.

Q. Did not have an account? A. That I know of.

Q. Well, during the three years or so that you were with Mr. Mishel, did you ever learn that he had an account at the Pennsylvania Exchange Bank? A. Mishel had several accounts at the Pennsylvania Exchange Bank.

Q. There were a number of accounts, weren't there? (765) A. That's right.

Q. And there were some loans, too, that he had, didn't he?

Mr. Hallinan: I will object to this.

Q. At the Pennsylvania Exchange Bank he also had loans, didn't he?

Mr. Hallinan: I will object to this on the ground it is outside the scope of legitimate cross-examination, your Honor. Without saying any more, it is the same point I have expressed to your Honor time and time again.

The Court: I will sustain the objection.

Mr. Rosenblum: Exception.

Q. Did you have loans at the Pennsylvania Exchange Bank?

Mr. Hallinan: I will object to this on the grounds of relevancy, your Honor.

The Court: I will let it be answered.

Q. Did you have loans at the Pennsylvania Exchange Bank? A. Yes.

Q. And did you bring in money from time to time to pay those loans? A. No.

(766) Q. Did you pay the loans? A. No.

Q. You mean you obtained money from the Pennsylvania Exchange Bank and you never repaid it? A. That's right.

Q. When for the first time did you get such loan? A. When?

Q. Yes. A. I don't remember the year. I got a loan with Mishel's signature.

Q. Who got the money? A. Pardon?

Q. Who got the money? A. Mishel.

Q. Do you know whether Mishel sent any money down

with you to pay those loans? A. I know one or two payments were made on the loan, and that's all.

Q. Do you remember a little book, a little blue book, with coupons that was used at the time payments were made on loans? A. If that was the loan book, I imagine that would be it.

(767) Q. Do you remember that there was a loan book? A. Yes, there was a loan book.

Q. Do you recall whether or not you would bring money down in connection with payments on that loan book? A. I said I never made a payment on the loan.

Q. Can you tell us when you made that loan? A. Can I say when?

Q. Yes. A. I don't remember the date, the year.

Q. You remember about these envelopes, don't you? A. Pardon me?

Q. You remember these envelopes, don't you? A. Which envelopes?

Q. Was it before or after the envelopes were brought down by you? A. During the time.

Q. Did you have only one loan? A. Pardon me?

Q. Did you have only one loan? A. On my name, yes.

Q. Was that for $420? A. $420?

Q. Yes, the first one. (768) A. No.

Q. You say you don't recall whether you obtained a loan from the Pennsylvania Exchange Bank—I will give you a date—on December 28, 1948, for $420? A. For how much money?

Q. $420. A. I don't recall it.

Q. Would you say that you did not? A. Well, let me answer you the question this way——

The Witness: (To Court) Is it all right?

The Court: Yes.

Q. Can you recall it or not?

Samuel Siegel—for Government—Cross

The Court: Let him answer it.
(To witness) Answer it your way.

A. I would like to answer the question the way I want to answer it, if you don't mind.

Mr. Rosenblum: I submit he can——
The Court: Let him answer it.
Mr. Rosenblum: We have had other experiences where your Honor has indicated to the witness "You can answer it that way" and I have had to move to strike the answer.
The Court: I will take my chances.
(769) (To witness) You answer it your way.

A. Mishel on my name took loans, using my name. A loan I remember signing for the Pennsylvania Exchange Bank was one for about $1200 or so, or it may have been the $420 one you say and then may have been increased again by Mishel. I do not know. That is the only way I can answer that question to you.

Q. Do you know whether the loans in your name at the Pennsylvania Exchange Bank were December 28, 1948, for $420, March 1, 1949, for $1080, and on January 6, 1950, for $1530? A. I wouldn't say I signed for those loans. Mishel was using my name. He used to sign my name.

Q. Did Mishel do those things? A. Yes, sir.

Q. Do you know whether he sent down any money in connection with the payments of loans through you to the Pennsylvania Exchange Bank? A. Are you speaking of the payments to a loan?

Q. Yes. Do you know whether Mr. Mishel from time to time sent down money—you say he sent down money to the Pennsylvania Exchange Bank; is that right? A. Yes, that's right.

(770) Q. You say over the three-year period, you now fix it at about two or three times under the way you gave it to us before? A. Fix what?

Q. The number of times you say you brought down money. A. What money are you referring to?

Q. In an envelope. A. Mishel never gave me payments for a loan in an envelope.

Q. He never gave you payments for loans in an envelope? A. That's right.

Q. You brought money down to the Pennsylvania Exchange Bank? A. That's right.

Q. Is that right? A. That's right.

Q. At that time were those loans given by the Pennsylvania Exchange Bank in your name to Mr. Mishel? A. It's very possible.

Q. Do you have any doubt about it? A. I don't have no doubt at all.

(771) Q. That means you are sure it was so; right? A. I would say 99½ per cent.

Q. Tell us the second occasion. You say the first time you brought down was money, of the times you said you brought envelopes down; right? A. (Witness nods.)

Q. Tell us the second occasion that you brought down an envelope. A. Are you asking me for a time?

Q. Yes, that is what I am asking you. A. I can't answer you no time.

Q. Can you tell us whether on the second occasion there were theatre tickets or money in the envelope? A. I couldn't answer that either.

Q. You are sure that Mr. Miller did not open the drawer of his desk and put the envelope in his desk? You are sure, say the first time you brought money down, that he did not open the drawer of his desk and put it in his desk? A. The first time?

Q. Yes. A. No, he didn't.

Q. You remember now specifically the fact that (772)

when you gave him an envelope while you were standing there he put it in his pocket? A. He wasn't standing. He was sitting at his desk.

Q. Sitting at his desk? A. That's right.

Q. That you remember definitely? A. Distinctly.

Q. And tell us on the second occasion approximately when it was that you brought down an envelope. A. I can't answer you a time.

Q. You don't remember that? A. The time I couldn't give you.

Q. You cannot even give us an approximate time? A. It wouldn't be fair to me to give you a time.

Q. It would not be fair to you? A. That's right, because I would only be telling something that wasn't true.

Q. I do not want you to say anything that you cannot testify to. A. That's right.

Q. Take the third occasion. What was it that you brought down, theatre tickets or money? A. Again I can't answer you because I couldn't (773) be telling you a time limit.

Q. I do not ask you now for the time. I am asking you what you brought on the third occasion. A. I don't remember.

Q. You say in all you brought down envelopes on five or six occasions? A. More or less, yes.

Q. How much less than five or six could it be and how much more than five or six could it be? A. As I answered you before, perhaps one or two more or one or two less.

Q. So it could be one or two on the increase side or on the decrease side of the five or six that you testified about; is that right? A. That's right.

Q. And you say that you brought down theatre tickets on two or three occasions? A. That's right.

Q. Right? A. That's right.

Q. Now, can you go to the fourth occasion, if there was

a fourth occasion, and tell us whether you brought down theatre tickets or money? A. There was a fourth occasion, but I can't (774) give you no time.

Q. Can you tell us what it was? A. You are asking me something that I can't answer you.

Q. Then you just say you cannot answer; but I am asking the question and if you can answer, please give us an answer. A. I say no.

Q. You say "No," meaning you cannot answer? A. That's right.

Q. That means you have no recollection? A. I have no recollection of the time.

Q. Have you a recollection as to whether on the fourth occasion you brought down money or tickets? A. No.

Q. So you don't have a recollection as to the fact either as to what it was?

Mr. Hallinan: I object to the form of this, your Honor.

Mr. Rosenblum: I will withdraw it and change the form.

Q. So that on the fourth occasion you cannot tell this Court and jury as to whether you brought down money or theatre tickets? (775) A. I know I brought down envelopes——

Q. Will you answer my question, please, as to the fourth occasion?

Mr. Hallinan: He is trying to.

Mr. Rosenblum: I ask, too, your Honor, that the witness be directed to answer my question as I put it. I asked a question as to whether or not he can tell us on the fourth occasion whether he brought down money or theatre tickets. He can tell us yes, no, or tell us what the answer is.

The Court: I won't tell him to say yes or no.

(To reporter) Read the incomplete answer back.

(To witness) And then you complete it.

(Last answer read.)

The Witness: You want me to finish my paragraph or answer?

The Court: You finish the answer.

A. I know I brought down envelopes, and I know several times there was money inside the envelopes.

Q. Now I will put the question again to you and ask you can answer my question.

Mr. Rosenblum: I ask that the other answer (776) be stricken out as not responsive. I indicated to the Court I believed it would not be responsive, and that is why I made the statement I did at that time.

The Court: I will let it stand. In other words, I think it is very clear what the testimony is, and I will let it stand as it is.

Mr. Rosenblum: I take exception.

The Court: All right.

Q. You say that you were on probation for how many years? A. I was put on probation for two years and my probation officer, after a period of a year and a half, said that I would be all right because of my good behavior, and so forth.

Q. In other words, you did not have to report after a year and a half; is that right? A. That's right.

Q. And do you know whether or not your probation in fact extended for a five-year period even though you only reported for a year and a half? A. I am not familiar with that, so I can't answer you.

Q. Can you tell us whether or not at the time (777) you

were first sentenced, whether you were given a jail sentence? A. Yes, I was.

Q. Did you at that time cooperate with the authorities and did you then get a suspended sentence? A. No, that wasn't the reason.

Q. Were you told at any time to do that? A. To cooperate with the authorities?

Q. Yes, as part of your sentence. A. You will have to make that more clear to me. I don't understand you. I am sorry. I don't understand what you are trying to ask me.

Q. Whenever you don't understand my question, please tell me that.

During the time while you were on probation, were you in touch with either the State or the Federal authorities? A. I believe I was.

Q. And during that time were you questioned concerning these matters——

Mr. Hallinan: Your Honor, I am going to object——

Mr. Rosenblum: Let me finish my question.

Q. —concerning the matters that you testified (778) about this morning?

Mr. Hallinan: I am going to object to this unless it is limited to the Federal authorities. We have been through this in another aspect and I think it is confusing and I do not think it is relevant to go into both areas.

The Court: I will let Mr. Rosenblum go ahead. Overruled.

Mr. Rosenblum: Will you read the question to the witness?

(Question read.)

A. No, I don't think so.

Q. You say you don't think so? A. That's right.

Q. That is, during the period of your probation you did not tell any Government officer that you delivered envelopes to Mr. Miller in the way you have described it today? A. I don't recall doing it.

Q. Will you think for a moment and see whether or not while you were on probation you were being questioned concerning this matter that you testified about this morning?

Mr. Hallinan: At this point I will object (778a) to this on the grounds of relevancy. I do not know how to express this in front of the jury. I think acts subsequent to the sentence are irrelevant.

The Court: I will overrule the objection.

Mr. Rosenblum: Mr. Stenographer, would you read the question, please.

(Question read.)

A. I don't think so, Mr. Rosenblum.

(779) Q. You aren't sure? A. I am not sure, no, I am not. I tell you why I can't, because of the fact that I was—my income tax—the tax people, I had trouble with that, and I may have gone to—I was only seeing my probation officer once every two months, not the same as every other fellow, every week. So I couldn't recall what your question was.

Q. Regardless of the number of times that you saw your probation officer—I will withdraw that.

Now, will you tell us whether or not the last item that I referred to and brought to your attention, the fourth occasion you brought down an envelope, whether Mr. Miller put the envelope in his inside coat pocket? A. I wouldn't say before. I said he did it practically every time I went down there.

Q. You recall that definitely, is that right? A. That is right.

Q. Not that he put it in his desk or anything? A. I would say he put it in his coat pocket.

Q. You said you were convicted in connection with a violation of the Federal Law, is that right? A. That is right.

Q. Did you on any occasion bring down envelopes to the Pennsylvania Exchange Bank in connection with anything other than the money or theatre tickets that (780) you referred to? A. I would have to answer yes.

Q. And did you bring down papers in connection with any business transaction that Mr. Mishel or one of his corporations had at the Pennsylvania Exchange Bank? A. Papers?

Q. Papers of any kind, such as notes—A. Yes, yes.

Q. Notes of different kinds? A. Yes.

Q. And did you on occasions bring down papers other than notes? A. I wouldn't say other than notes. It was all pertaining to the bank——

Q. It was what? A. It was all pertaining to the bank, when you speak of papers.

Q. Yes, papers. Were there any transactions that Mishel or any of his companies or corporations had that made it necessary for you as the errand boy to bring down envelopes or papers to the bank? A. Any time I would go down to the Pennsylvania Exchange Bank with anything outside of something that (781) would be personal to someone else would never be in no envelopes.

Q. It would never be in an envelope? A. Unless it was something personal to someone else.

Q. You mean if you brought down several notes at one time you remember they were loose? A. That is right, folded up.

Q. You recall definitely that it was never put in an en-

velope? That you have a definite recollection of? A. I couldn't say it was definitely never put in an envelope. But I say that anything that wasn't personal to an individual at the bank was either put in my pocket loose, such as I am carrying this folded up, or put into a Manila envelope where I could just slide it out and give it to whoever I had to give it to.

Q. Did you on any occasion bring down papers, notes that were similar to notes which you did put into an envelope. A. Seal it?

Q. No. Sealed or opened or closed or—A. Possibly.

Q. Now, in connection with your conviction did Mr. Mishel have anything to do with that?

Mr. Hallinan: I object to this, your Honor.

(782) May we approach the bench?

The Court: I will sustain the objection.

Mr. Rosenblum: Exception.

Q. In what court were you convicted? A. The Federal Court.

Q. Was Mishel a co-defendant with you?

Mr. Hallinan: I object to this, your Honor.

The Court: Sustained.

Mr. Rosenblum: Exception.

Q. What was the crime that you pleaded guilty to? A. Forgery of stocks and bonds.

Q. Forgery, or transporting stolen stocks and bonds? A. Forgery.

Q. And did Mr. Mishel tell you to sign whatever bonds you signed?

Mr. Hallinan: I object to this, your Honor, on the grounds of relevancy.

The Court: I will sustain the objection.

Mr. Rosenblum: Exception. No further questions.

Mr. Hallinan: Just one question.

Redirect examination by Mr. Hallinan:

Q. Mr. Siegel, do you recall that I called you at your home Sunday night? (783) A. That is right.

Q. Mr. Rosenblum asked you the question, at least a series of questions. He contacted you, didn't he? A. That is right.

Q. He asked you to come down? A. That is right.

Q. You said you wouldn't until you had spoken to me? A. Correct.

Q. Will you tell the Court and jury what I said to you Sunday night on the telephone, please?

Mr. Rosenblum: I object to that.

The Court: I will overrule the objection. Go ahead. In so far as it had anything to do with Mr. Rosenblum's conversation.

Mr. Hallinan: Yes.

The Witness: May I have that question?

Mr. Rosenblum: I will withdraw my objection.

The Witness: May I have the question, please?

The Court: Yes.

(Question read.)

A. You told me that you couldn't tell me what to do, that I would have to, whatever I want to do is what I should do on my own.

(784) Q. You specifically asked me for advice as to whether or not you should go down and see Mr. Rosenblum? A. I did, I did.

Q. And in response to that I told you what you have just said? A. That is right.

Mr. Hallinan: You may inquire.

The Court: All right. That is all, Mr. Siegel. Thank you.

We will take a ten minute recess now. Don't discuss the case.

(The jury retired.)

The Court: We will start at a quarter of 12.

(Recess.)

(Jury present.)

NORTON SCHNABEL, called as a witness on behalf of the Government, being first duly sworn, testified as follows:

Direct examination by Mr. Hallinan:

Q. Mr. Schnabel, how are you employed presently? A. I am manager of a cabaret.

Q. What is the name of that cabaret? A. Club Baby Grand.

Q. Where is it located? (785) A. 1274 Fulton Street, Brooklyn.

Q. How long have you worked there? A. About two and a half years.

Q. Where did you work prior to that time? A. London Motors.

Q. Where is that located? A. Also in Brooklyn, 475 Flushing Avenue.

Q. What did you do there? A. Office manager.

Q. How long did you work there? A. About four years.

Q. Where did you work prior to that time? A. I worked for Irving Mishel.

Q. What period of time did you work for Irving Mishel? A. From about December, 1949 up until about March, '51.

Q. What did you do for Irving Mishel? A. Took care of his bank errands, books, general work.

Q. Now, in connection with taking care of his bank errands, did you ever go to the Pensylvania Exchange Bank for him? A. Yes, I did.

(786) Q. At his instructions did you ever deliver envelopes——

Mr. Rosenblum: I don't think we need leading questions at this time.

The Court: I sustain the objection.

Q. Did you ever deliver anything at his instructions to Mr. James W. Miller, president of that bank? A. Yes, I did.

Q. What was that? A. Envelopes.

Q. How many times did you deliver envelopes to Mr. Miller? A. I would say about maybe fifteen times during the course of my working for him.

Q. Did you also make deposits at the bank? A. Yes, I did.

Q. In what form would you make the deposits; how would you make the deposits? A. Usually cash.

Q. Any other documents? A. No, just deposit slip and the money.

Q. In connection with the envelopes, would Mishel say anything to you when he asked you to deliver them to Mr. Miller?

(787) Mr. Rosenblum: I object to the question. I think it is clear that it was not in the presence of the defendant.

The Court: I will sustain the objection.

Q. Mr. Schnabel, where did Mishel have his office during this period of time? A. 570 Seventh Avenue.

Q. Did you ever see the defendant James W. Miller in that office? A. I believe I did once.

Mr. Hallinan: You may inquire.

Cross-examination by Mr. Rosenblum:

Q. You said you believe you did? A. Yes. It was a long time ago and, I mean, it is something I didn't pay attention to at the time, but I believe I have seen him at the office once.

Q. You believe you saw him once? A. Yes.

Q. You are not sure? A. I can't be positive; it has been a long time ago.

Q. You say you brought envelopes? A. Yes.

Q. What was in the envelopes? (788) A. I couldn't tell you.

Q. You say you can't tell us what was in the envelopes? A. No; they were sealed.

Q. You wouldn't know just what was in it, whether it was paper, money, or anything else? A. No.

Q. Is that right? A. No; I wouldn't want to surmise that. I am not sure, so I wouldn't say.

Q. In fact, you were tested, were you not, by Mr. Hallinan and Mr. Milenky to see whether you could determine whether the envelopes had money or papers? A. Yes, if I could tell.

Q. What is that? A. Yes, to see if I could tell.

Q. You were able to tell, weren't you? A. Yes, as a rule I can, but I wouldn't——

Q. Do you remember an occasion when Mr. Milenky and Mr. Hallinan gave you two envelopes? A. Yes.

Q. And asked you to see if you could tell? A. That is right.

Q. And you were able to tell? (789) A. At that time, yes.

Q. So you can't help either way as to what was in the envelopes? A. I wouldn't want to take a guess at it. A man's future is at——

Q. Do you remember having a conversation with Mr. Mishel about your making an affidavit in which he wanted you to say that you gave money to Mr. Miller? A. Yes, I do.

Q. Was that after he had gotten a thousand dollars for your mother? A. Yes.

Mr. Hallinan: I object to this, if your Honor please.

Mr. Rosenblum: I am leading up to something.

The Court: I think you can lead up to it in some other way. I will sustain the objection and strike out the answer.

Q. Well, in connection with the affidavit, did Mishel tell you if you went up to Bierman's office, signed an affidavit saying that you gave money to Miller, that he would give you a thousand dollars for your mother?

Mr. Hallinan: I object to this on the form of the question, and also——

(790) The Court: Sustained.

Mr. Hallinan (Continuing)—on the ground that Mr. Rosenblum has objected to any statement of Mishel on the ground that it was hearsay, and I make the same objection, your Honor.

Mr. Rosenblum: Hearsay to whom? Because the defendant isn't there is one thing, he wasn't present. And the defendan't shouldn't——

The Court: I will sustain it on the first ground.

Mr. Rosenblum: On what?

The Court: I sustain the objection on the ground that it is leading.

Mr. Rosenblum: On cross-examination?

The Court: It is not cross-examination. There is no direct on this subject. This is your——

Mr. Rosenblum: I think it leads from it. He is a hostile witness.

Mr. Hallinan: Oh, no.

Mr. Rosenblum: I will withdraw that.

The Court: I don't make any such finding.

Mr. Rosenblum: All right.

Q. Tell me, Mr. Schnabel, did you ever sign such an affidavit?

(791) Mr. Hallinan: I object to any further inquiry about it on the ground of relevancy, your Honor.

The Court: I will sustain the objection. I don't know, frankly, what affidavit we are talking about at the moment.

Q. Did you sign an affidavit to the effect that you delivered money to Mr. Miller, money given to you by Mr. Mishel to deliver to Mr. Miller?

Mr. Hallinan: I object to this.

The Court: Sustained.

Mr. Rosenblum: I have no further questions.

The Court: All right.

Mr. Hallinan: No further questions.

The Court: All right.

Mr. Hallinan: Now we have reached the other problem that I informed you about this morning.

The Court: Can you start with your witness or is he——

Colloquy of Counsel

Mr. Hallinan: No. The witness is actualiy on the detail of the——

The Court: He will be gone all day, then?

Mr. Hallinan: No. He will be tied up this morning but he will be available at 1 o'clock, he told me close to 1 o'clock.

(792) The Court: He will be available?

Mr. Hallinan: Yes.

The Court: Then I think, although it may upset your plans, and I hope you haven't made any appointments, the thing for us to do is to recess now for lunch and resume at 1:15, if that will give you time. How about you?

Mr. Hallinan: I am sorry, your Honor. I think today, if your Honor pleases, we might have a longer lunch hour. He told me he was a little doubtful that they——

The Court: All right. This witness has other duties than coming here this morning which are equally important. Then we will make it 2 o'clock to give him a chance to get here.

All right. Don't discuss the case.

(Jury retired.)

(Recess until 2 o'clock p. m.)

(793)

AFTERNOON SESSION

(Jury in box.)

GEORGE J. SERSHEN, called as a witness on behalf of the Government, being duly sworn, testified as follows:

Direct examination by Mr. Hallinan:

Q. Mr. Sershen, by whom are you employed? A. By the United States Secret Service.

Q. And how long have you been so employed? A. Since March 1937.

Q. What is your official title? A. Special agent.

Q. Now, did there come a time in the course of your official duties sometime in 1950 when you were assigned to the case of the uttering and forgery of certain bonds registered in the name of Chernoff? A. Yes, sir.

Q. Do you recall when that was? A. That was during the latter part of July 1950.

Q. Now, do you recall in connection with that investigation that you went to the Pennsylvania Exchange Bank? (794) A. Yes, sir, I did.

Q. Do you recall the first time you went there? A. I went there on August 3, 1950.

Q. And what did you do at the bank on that day? A. On that date I saw Mr. Brennan and I showed him the bonds or, rather, photostatic copies of the bonds, and I asked him if he could assist me in telling me just how the bonds were negotiated there, and he advised me that the bonds had been accepted for redemption by three tellers, a Miss Graef, a Mr. Horan and a Mr. Lucey, but that Miss Graef and Mr. Horan had resigned from the bank.

I asked him to obtain for me the addresses of Miss Graef and Mr. Horan, which he did. At the same time I asked him to furnish me with photostatic copies of the redemption slips used in the negotiation of these bonds.

Q. Thereafter did you at any time go back to the bank? A. Yes, I did, several days later, on August 9, 1950.

(795) Q. And did you see anyone at the bank at that time? A. Yes, sir.

Q. Who? A. I saw Mr. Brennan, Mr. Lucey, and Mr. Miller, the president.

Q. Now on that day did you have a conversation with Mr. Miller? A. Yes, sir, I did.

Q. What was that conversation? A. Well, the conversation was short. I showed him the photostatic copies of these 59 bonds issued in the name of Chernoff and I asked him if he knew anything about the bonds. And he told me no, that he had nothing to do with the bonds and that the tellers cashed the bonds. He suggested that I see the tellers about them.

Now that was the extent of my conversation with Mr. Miller on that day.

Q. Now on that same day did you obtain anything from Mr. Brennan at the bank? A. Yes. In accordance with my request he provided me with photostatic copies of the redemption slips.

(796) Q. Thereafter, sometime in October 1950, did you interview Miss Graef? A. Yes, I did.

Q. Where did you interview her? A. At her home, in Jackson Heights.

Q. Some time thereafter did you interview Mr. Horan? A. I did.

Q. Do you recall when that was? A. That was on October 5th and it took place at the Bensonhurst Bank, in Brooklyn, where he was working at the time.

Q. Now, on October 5th did you see anyone else in connection with this case? A. Well, later that same day I returned to the Pennsylvania Exchange Bank on 48th Street for the purpose of seeing Mr. Miller but he wasn't there and instead I saw Mr. Brennan.

Q. On Octber 6, 1950, did you in the company of Special

George J. Sershen—for Government—Cross

Agent Edward Sweeney place under arrest one Irving Mishel? A. Yes, sir.

Q. And did you say anything to Mr. Mishel that day?
(797) A. Yes, sir. I questioned him about these, about the——

Mr. Rosenblum: I object to any statement out of the presence of the defendant.

Mr. Hallinan: May we approach the bench? I won't say another word. I will tell you why it is relevant, your Honor.

The Court: All right, come up.

(The following proceedings were had at the bench out of the hearing of the jury.)

Mr. Hallinan: I will make my offer of proof. This witness is about to testify that he informed Mishel that the three tellers at the bank had identified him as the one who brought the bonds into the bank. I don't offer this statement for the truth or falsity of that statement. I offer it in this connection: the witness Mishel has testified that after he was released on bond he went back to Miller at the bank, or met him somewhere, and said that "I understand that these three tellers have identified me. And, what's with it?" And so forth and so on. I offer it for that purpose.

The Court: I don't think we need that. In other words, why Mishel said what he said to Miller (798) has no bearing on the——

Mr. Hallinan: It is going to make this tremendous difference. It adds some support to the fact that Mishel testified to that effect, because their whole defense is going to be that Mishel is lying.

The Court: If as a result of their defense we need Sershen again, we can get him on rebuttal.

Mr. Hallinan: Surely.

(The following took place in the hearing of the jury.)

By Mr. Hallinan:

Q. On October 6 did you go back to the Pennsylvania Exchange Bank? A. Yes, sir, I did.

Q. Who did you see at the bank on that day? A. Mr. Miller.

Q. Did you have a conversation with him on that day? A. Yes, sir, I did.

Q. Will you tell the Court and jury what was said by you and what was said by him? A. Well, I showed him these copies of the bonds again and I asked him whether he recalled anything (799) on these particular bonds.

And he said that he had been thinking about the matter and that he recalled that on two occasions Irving Mishel came into the bank with bonds and that on one of these occasions he remembered the name on the bonds was Chernoff. He said that Mishel on those two occasions had been accompanied by another individual and that the individual remained some distance away from his desk.

I asked Miller if he saw this particular individual whether he could describe him. And he said no, that he couldn't. But Mishel had told him that that person was named Chernoff and was a friend of his and Mishel asked him on these occasions to cash these bonds as a favor for him. And Mr. Miller said that he did so.

At the same time, I asked Mr. Miller for, and he gave me the original bond redemption slips. And I called his attention to the fact that the name Thomas Young appeared on these slips as identification. And I asked him how he could have accepted for identification anyone in the name of Thomas Young from a person named Miller while the bonds were issued in the name of Chernoff.

(800) And he said he didn't recall the exact transaction.

So Mr. Sweeney was with me there at the time and he sked him I think whether—he asked Mr. Miller whether r. Miller spoke to this person named Chernoff.

And Mr. Miller said no.

I told Mr. Miller that in view of the circumstances it as obvious to me that he had not followed the Governent, the Treasury Department regulations in cashing nds, that he should have demanded identification from e individual in whose name the bonds were issued.

When I asked Mr. Miller if he knew Thomas Young, he id no, but that he thought Young was a friend of Mishel's d that he worked in a restaurant, Roth's Restaurant, on th Street and Seventh Avenue. I don't recall anything rther now.

Q. Now this conversation that you have just testified to, l that happen on October 6th or October 10th? A. Oh, at happened on October 10th, that particular——

Q. Going back to October 6th, did you visit the (801) nk on that day? A. Yes; I saw Mr. Miller on that parular day.

Q. What was said on that day? A. Well, on that day I owed him the bonds again. And he told me that he ln't know anything about those bonds, and he suggested at I see the tellers on them. I did not see anyone else ere at the time. I just left the bank.

Q. Was anything else said at that time by either you or . Miller? A. Yes. I told him then, too, that it didn't pear to me that he had used proper care in accepting ose bonds for redemption. And he told me that he ln't remember the transaction, he didn't know anything out those bonds, that the tellers cashed the bonds.

(802) Q. Now, you have already testified to the conversion of October 10. Did you thereafter go in the company of Agent Sweeney to Roth's Bar and Grill? A. ter on October 10 we went to that particular restaurant.

Q. And what did you do there? A. We asked for the

manager and spoke to him, and we asked him whether he knew a Thomas Young.

Mr. Rosenblum: I object to any statements not in the presence of the defendant.

The Court: I will ask another question.

Q. Could you locate Thomas Young at Roth's Bar and Grill? A. No, sir, I could not.

Q. Did you attempt to locate him at any other place? A. Yes, I did.

Q. Where? A. At 515 Seventh Avenue, New York City.

Q. Where did you get that address? A. The address I got from Mr. Miller. It was on Mr. Young's signature card at the bank.

Q. Could you locate Mr. Thomas Young at 515? A. No, sir.

(803) Q. Now, Agent Sershen, on October 10, 1950, did you show to Mr. Miller a photograph of Irving Mishel? A. No, sir, I didn't have any.

Q. On October 6, 1950, did you show to Mr. Miller, when you spoke with him on that date, a photograph of Irving Mishel? A. No, sir, I did not.

Q. On August 9, 1950, when you spoke with Mr. Miller, did you show him a photograph of Irving Mishel on that date? A. No, sir.

Mr. Hallinan: You may inquire.

Cross-examination by Mr. Rosenblum:

Q. Did you have a photograph of Mr. Mishel?

Mr. Hallinan: I am sorry. I did not hear that question.

The Court: Read the question back.

(Question read.)

A. When, sir?

Q. At any time. A. After his arrest. On the day of his

arrest, October 6, I took photographs of Mr. Mishel. Now, usually we have to wait a week or ten days before these photographs (804) are developed, and about that time I probably had half a dozen or more photographs of him.

Q. That was after the arrest? A. That was after the arrest.

Q. You say you obtained the name, Mr. Mishel, from three tellers? A. Yes, sir.

Q. And then you got information as to his address? A. I got information as to his address from the bank, sir.

Q. From the bank? A. Yes, sir.

Q. Did you check the Bureau's files to see whether or not he had a criminal record?

Mr. Hallinan: I will object to this on the grounds of relevancy, your Honor.

The Court: I will sustain it.

Mr. Rosenblum: Exception.

Q. When you went to arrest Mr. Mishel did you know what he looked like? A. No, sir. I had a general description of the gentleman, that's all.

Q. Now, when you came back to the bank on the 10th, you then did have pictures of Mr. Mishel? (805) A. No, sir, I don't think so. I can't remember positively. I told you that I took pictures of him on October 6 and that it usually takes perhaps a week or ten days before the pictures are developed. Now, I didn't show Mr. Miller a photograph because I knew Mr. Miller knew Mishel. There was no reason for it at that time.

Q. You are certain you did not come into the bank on one occasion and tell him you arrested Mr. Mishel at that time and showed him a photograph? A. No, sir, I don't recall ever showing him a photograph.

Q. You did talk with him about the fact you arrested Mr. Mishel? A. I don't recall telling him that I arrested Mishel.

Q. Would you say you did not tell him? A. I wouldn't say that, no, sir. I just can't remember whether I did or not.

Q. Your principal duty, was it not, as an agent, was to obtain or to locate, if you could, the forger and the person or persons who stole bonds? A. My duty is to make an investigation into the theft, forgery, and fraudulent negotiation of the bonds. If they are merely stolen and never forged, I have nothing (806) to do with it, sir. They have to be first forged.

Q. If they were forged then you had jurisdiction? A. Yes, sir.

Q. You knew, of course, by the time you went to the bank that the bonds had been forged? A. Oh, yes, sir.

Q. You had contacted the Chernoffs and you learned from them that they had not signed the bonds? A. Well, I don't know whether I had contacted them before the arrest or after the arrest, but I did have affidavits from them that were sent to me by Washington in which they stated that the bonds had been stolen.

Q. In other words, you knew at the time that the bonds had been stolen and also had been forged? A. Yes, sir.

Q. So that you say one of your primary purposes or one of the items which gave you jurisdiction is when you found that a particular Governmental document had been forged, such as specimen money or bonds; is that right? A. That's true, yes, sir.

Q. So that one of your primary purposes in apprehending Mishel had been accomplished? A. Yes, sir.

(807) Q. And you had taken him down and arraigned him on the charge of forgery? A. No, it wasn't on a charge of forgery. I think we charged him——

Q. I don't know what. You tell us what it was. A. We arraigned him on the charge of fraudulently uttering those bonds, not on the forgery.

Q. Fraudulently uttering? A. Yes, sir.

Q. When you went back to the bank, then, as you told us before, you had the forger? A. Yes.

Q. Do you recall whether or not at that time you talked about closing up the case? Now having had Mishel, did you talk about trying to close up the matter with Mr. Miller? A. No, sir, I don't recall that. I would not have made a remark like that. I know that.

Q. What is that? A. I know I could not have made a remark like that.

Q. Did you say anything to Mr. Miller with regard to the identification of the other person that (808) had been discussed? A. You mean Thomas Young?

Q. No, Chernoff, the man represented who himself or he said represented himself to him as Chernoff. A. I asked him whether he had made any attempt to identify the person who Miller claimed was Chernoff, and Mr. Miller said no, that he cashed the bonds for Mishel because he knew Mishel and he did it as a favor for him.

Q. And did he tell you that Mishel had actually brought along another person on the occasion when he cashed the bonds for Mishel? A. Yes, sir, he did.

Q. Did you say to him, "Since you say you knew Mishel and you were doing it for Mishel, what was the purpose of another man being there"? A. Well, he already told me what the purpose was. He said that Mishel came to him with these bonds and said that the owner of the bonds was a gentleman some place in the front of the bank, would he cash the bonds as a favor for him, Mishel.

Q. So that he in effect said to you that Mishel said to Mr. Miller that there was a person in the bank who was the alleged owner of the bonds? (809) A. Yes, sir.

Q. Is that right? A. Yes, sir.

Q. And do you recall whether or not on the occasion when you talked with him about the arrest of Mr. Mishel and the fact that you already had put him under arrest— A. I don't—

Mr. Hallinan: I will object to the form of the question.

The Court: Sustained.

Q. Did you discuss with Mr. Miller the fact that you had put Mr. Mishel under arrest? A. I don't recall telling him that I placed Mr. Mishel under arrest.

Q. Did you tell him you took him into custody? A. It is the same thing, custody or arrest. I don't recall that I told him I placed Mr. Mishel under arrest.

Q. You say you don't recall that? A. No. I wasn't volunteering any information to Mr. Miller.

Q. Would you say that you told Mr. Miller nothing about Mishel on that occasion? (810) A. On October 6th I didn't tell him anything about Mishel.

Q. How about October 10? A. Yes, I told him about the bonds being cashed by Mishel there.

Q. Was that the first time that you discussed with him the fact— A. That is the first time——

Q. —that Mishel's name came in? A. That is the first time, as near as I remember, that I mentioned Mishel's name to Mr. Miller. That was on October 10.

Q. Was that the first time that either you or Mr. Miller mentioned the name Mishel? A. Yes, sir. That is October 10.

Q. You were there on October 6? A. Yes, sir, I was.

Q. And you say at that time he said he had been thinking about it? A. No, he hadn't been thinking about it on October 6th. He had been thinking about it on October 10th.

Q. Is the 10th the time? A. My conversation with Mr. Miller on October 6th (811) was very brief.

Q. At that time there was no discussion about Mishel? A. No, sir.

Q. You say that occurred, then, on October 10; right? A. Yes, sir.

George J. Sershen—for Government—Cross

Q. I think when Mr. Hallinan was examining you you testified with regard to events that occurred on one prior date, do you remember? A. Yes.

Q. That is what I was confused about. Will you please give me those again. What occurred, as you say they occurred, on October 6 and October 10, giving it to me in the order, giving me the earlier date first? A. On October 6, that was the day I arrested Mishel, I saw Mr. Miller again and I showed him these bonds, and again I asked him whether he knew anything about the bonds; and then he told me that he didn't know anything about the bonds, he didn't remember them, that it was not his function to cash bonds, that the tellers did so, and he suggested that I see the tellers. So I left him.

(812) Now, on October 10 I was with Mr. Sweeney when I saw Mr. Miller. On that date I showed him the bonds again and I asked him about them, and it was then that he said that he recalled that on two occasions Mishel had come into the bank with bonds, that he recalled on one occasion the bonds that Mishel presented to him were in the name of Chernoff. He recalled that Mishel had told him or, rather, Mishel had come in accompanied by some other individual who was in another part of the bank and the Mishel had told him that that individual was Chernoff and that would he, Miller, cash these bonds as a favor for Mishel.

(813) Q. Now did you learn at any time that on December 26, 1951, Mr. Miller advised the Treasury Department that he was informed that the bonds were properly cashed in accordance with the decision laid down in the official circular? Did you learn that at all? A. Some time after the arrest after October 10th my office received a letter from the Treasury Department in Washington indicating that the bank, the Pennsylvania Exchange Bank, was resisting efforts to pay the $6000 or the $7000, whatever the amount was involved—I don't remember the exact——

Q. $6684.50. A. I don't remember the amount, I don't remember the exact amount in the letter. At any rate, there was a request made in that letter for an additional report from me concerning the negotiation of the bonds and the part that Mishel and Mr. Miller played. And I submitted a report in answer to that letter. That may be the letter you are referring to, but I cannot remember the exact date.

Q. You mean your letter. A. No; the letter from the Treasury Department advising that the bank was resisting efforts, probably (814) based on Mr. Miller's statement that he had negotiated them properly.

Q. In other words, wasn't it the fact that during the entire time that you referred to and up to the time when the bank received the money from the bonding company and paid the Treasury Department, the bank took the position through Mr. Miller that the bonds, the Chernoff bonds, had been properly cashed?

Mr. Hallinan: I object to the form of the question as to relevancy, your Honor.

The Court: I will sustain the objection.

Mr. Rosenblum: Exception.

Q. Did you see Mr. Miller after October 10th? A. No, sir.

Q. You didn't see him after that? A. I did not.

Q. Now did you at any time learn——

Mr. Rosenblum: Will you give me the exhibit, December 26th?

Q. Did you at any time know that Mr. Miller had advised the Treasury Department that he was informed that your investigation showed that the bank was not negligent in cashing the bonds? (815) A. I recall only that one

letter from the Treasury Department to my office in which the bank was resisting and in which it was stated that the bank was resisting efforts to pay that particular amount of money because the bonds were allegedly properly negotiated. That is all that——

Q. That is, the bank claimed they were properly negotiated? A. Yes, sir.

Q. I show you 22 in evidence, Exhibit 22, and I ask you whether that is the letter which you saw? A. No, [redacted] did not see this letter. No, sir.

Q. Is this the first time that you see this letter? A. This is the first time I have seen this letter, sir.

Q. This is the first time you heard that a letter was actually written by Mr. Miller in which he claimed that he was informed that the bonds were properly cashed? A. Well, again, I go back to that letter I received from the Treasury Department to my office requesting additional investigation. In that letter (816) it was stated that the bank was resisting efforts. Now, Mr. Miller's name might have been mentioned; I don't recall.

Q. But did that letter have anything in there which said what the Treasury Department was informed by letter of December 26, 1951? Look at the letter that you have in your hand. A. I am sorry, sir, I can't recall.

Q. In other words, you have no recollection of that either way? A. No, sir.

Q. That would be a fair statement? A. Yes, sir.

Q. Now you filed a complaint against Mr. Mishel, did you not? A. Yes, sir, I did.

Q. Did you recommend that the complaint be dismissed?

Mr. Hallinan: I will object to this on the grounds of relevancy, your Honor. He has nothing to do with recommending.

Mr. Rosenblum: I am asking him what he did, if he did anything.

Mr. Hallinan: It is not their function. (817) I will object on the grounds of relevancy, your Honor.

The Court: I will let him answer.

A. I never made such a recommendation and I would never have.

Q. What is that? A. I would never have.

Q. Did you learn that the complaint was dismissed?

Mr. Hallinan: I object to this, your Honor. It has no relevancy, what he learned about what was done with——

Mr. Rosenblum: I think it is a case, if your Honor please, that he handled.

Mr. Hallinan: No. I will object.

The Court: I will sustain the objection.

Mr. Rosenblum: Exception. I have no further questions.

Mr. Hallinan: I have no further questions.

The Court: All right, Mr. Sershen, thank you.

The Witness: Thank you.

Mr. Hallinan: With one quick check of my exhibits to make sure that they are all in, which I can do in a moment, the Government will rest, your Honor.

(818) The Court: All right.

Mr. Hallinan: The Government rests, your Honor.

The Court: All right. Well, now, I will ask you to go out in the juryroom for a few minutes and I will be educated on various matters that won't concern you.

(Jury retired.)

Mr. Rosenblum: This can be off the record. It is just a question of timing.

(Discussion off the record.)

Mr. Perry: I would like to note for the record, your Honor, that briefs are being prepared at the office.

The Court: On the motion?

Mr. Perry: Yes.

The Court: I will hear argument on the motion, whatever you want, because, as I see it, you are not prejudiced if we go ahead, and if you should win the motion you would be happy and you would be glad to have spent an extra half-day on a problem. But I want to save the time of this jury. Some of them are businessmen and they are being held away from their work and if this case goes on for several days, why, (819) there is a chance that they will be held beyond their usual term of service, and I don't think that is fair to just take liberties with their time.

Mr. Rosenblum: I can say, your Honor, that I am certain the case cannot go beyond this term. Our defense is not going to be a long one. The thought I had, I want to put it in in the particular order in which I feel it would protect the rights of the defendant. If I could even have conceived the fact that the Government would be able to really finish everything up today, because we were told one witness would be back this afternoon——

The Court: As a matter of fact, I don't know why—this is off the record.

(Discussion off the record.)

The Court: I will tell you what I am going to do, Mr. Rosenblum. We will take a brief recess, give you ten minutes to get squared away——

Mr. Rosenblum: Can we do this? Can we have the oral argument now?

The Court: He wants to prepare briefs.

Mr. Rosenblum: No. The briefs will be submitted tomorrow.

Mr. Perry: We can take the oral argument.

(820) The Court: Do whatever you want to do, Mr. Perry.

Mr. Rosenblum: Can I send for a witness in a little while? I think maybe——

The Court: Why don't you go ahead and get started with whatever you have?

Mr. Rosenblum: Can we send for a witness? I don't think it will take too long. I think we can get him.

The Court: All right. You go ahead and have Mr. Rooney send for the witness and Mr. Perry start the argument. I actually don't see much to it, if you are going to brief this thing, of arguing it now, but if you have your thoughts in mind, why go ahead.

Mr. Perry: Yes, Judge. Well, we have the thoughts in mind.

The defendant moves, your Honor, for judgment of acquittal at the end of the Government's case, and preliminarily to the discussion of the grounds for this motion, to take about two minutes, your Honor, just to have the statute clearly in mind and then go on with the argument. The statute says: "Whoever in any manner within the jurisdiction of any department (821) or agency of the United States knowingly and wilfully falsifies, conceals or covers up by any trick, scheme or device a material fact or makes any false or fictitious or fraudulent statement or representation or makes or uses any false writing or document knowing the same to contain any false, fictitious or fraudulent statement or entry, shall be fined not more than $10,000 or imprisoned not more than five years or both."

Motion for Judgment of Acquittal

Now, your Honor, since the Government's case is closed and since I presume they have completed their offer of proof, I respectfully suggest, your Honor, that there is a failure of proof as to two items which are part of the Government's case; one is there is no proof that the defendant—the Pennsylvania Exchange Bank is a fiscal agency entrusted with any duty of responsibility to the Treasury; secondly, I say, your Honor, there has been no evidence offered which shows that the matter in issue is "Any matter within the jurisdiction of any department or agency of the United States."

I say, your Honor, in my judgment, to satisfy the statutory requirement in that regard there should be some statute or regulation before the Court which (822) would show proof that the fiscal service of the Treasury is actually a department or agency that has the matter involved within its jurisdiction. Failing that, I would say it has failed to satisfy the requirements of the statute.

Going beyond that, I would say, your Honor, that these letters were mailed from New York City and that they were received, two in Washington, D. C., and one Chicago, Illinois. Now we have briefed the cases; we are familiar with the cases, and my impression is that there is a split, one Circuit holding one way and another Circuit holding another way. But on the basis of the authority that exists, one of the cases being a Supreme Court decision, I respectfully suggest that the venue is not properly laid in this case.

The Court: Venue, you say, is where? In the office that received the letter?

Mr. Perry: Yes, where the letter is received.

(To Mr. Hallinan) That is the Valenti case, is that right?

Motion for Judgment of Acquittal

Mr. Hallinan: It certainly isn't. It was a Circuit court.

Mr. Perry: Perhaps it was a Circuit Court (823) decision.

But, in any event, there is a decision, and it is being briefed in our brief, which would support the argument that jurisdiction is not properly laid in the Southern District.

The Court: This point of venue hasn't been raised by motion——

Mr. Perry: No, Judge.

The Court: —prior to this?

Mr. Perry: No. I am glad you raised that because I want to have the record clear on that.

When we asked for a bill of particulars in this case we did ask for information as to whether the representations were oral or written. We did not get that answer in the bill of particulars.

Now, on about September 17th, 18th and 19th, around those dates, pursuant to a subpoena duces tecum, letters were made available to us. However, we had no knowledge at that time that the basis for these representations were these letters or were oral statements. We did not know in fact just what the Government's case was in that regard until the opening. We had no information whatsoever prior to that time upon which we could preface a motion (824) that venue was improperly raised. I do want that in the record to explain why there has not been an earlier motion.

Now the other grounds that we are moving on, your Honor, is that the first count charges that the defendant did make a false statement in that he said that the bonds were cashed in accordance with the circular letter, whereas the indictment goes on.

to say, "In truth and in fact the bonds were not cashed in accordance with the circular letter."

(825) Your Honor, if you examine that letter—the letter is the letter of December 26, 1951—the moving part which the Government has taken as the basis of the first count reads as follows:

"At the time the investigation was made by your Department we were informed that the bonds were properly cashed in accordance with procedure laid down in your official circular and consequently no claim would be made against you."

Now, I respectfully suggest to the Court that the statement as proved is different from the statement as alleged in the indictment with the consequence that the crime charged in the indictment has no proof to support it.

Now, I say this to your Honor by way of illustration and if your Honor will forgive me for using your name—Mr. Milenky and Mr. Hallinan and I were discussing this out in the corridor this morning—this count would be very much as if I were to say to Mr. Hallinan that Judge Walsh told me there would be no court on Friday. Whether or not there was court on Friday is not the point in issue. The point in issue is whether Judge Walsh told me that.

So I say a charge of a false statement based (826) upon this letter of December 26, 1951, should have said that the defendant did say that he was informed that the bonds were properly cashed, whereas in truth and fact he was not so informed. That, in my judgment, would be the way the count would have had to be pleaded to be consistent with the letter which allegedly is the basis of the charge. As it is now charged in the indictment, the representation alleged to the defendant is that he said the bonds were properly cashed whereas in truth and fact

they were not properly cashed, and that I respectfully suggest to your Honor is not what is represented in the letter and I suggest it may not support the count as charged.

Similarly with the second count. The second count is dated April 4, 1952, and that has reference to a letter of that date sent by Mr. Miller to the Treasury Department.

The indictment, the second count of the indictment, is virtually in identical terms, your Honor—well, as a matter of fact, it is identical with the first count except as to the date. The second count is April 4; the first count is December 26, 1951. Other than that the counts are identical.

Now, again, too, in the second count the charge (827) is that the defendant did make a false statement that the bonds were properly cashed in accordance with Treasury Department procedure, whereas in truth and fact the bonds were not so cashed.

There, too, your Honor, I would say the evidence adduced by the Government does not establish the crime charged in the indictment; in other words, the letter which is the basis of the count does not support the count because here, too, the letter reads as follows in its moving part:

"We regret that you are insisting on reimbursement because we feel that these bonds were cashed in good faith and within the meaning, letter and spirit of paragraph 4 of the Treasury Department circular covering such redemptions dated December 19, 1947."

I would say to have a charge of a false statement in this regard the charge should be that Miller represented that he had a belief that the bonds were properly cashed in good faith and within the mean-

ing, letter and spirit of Paragraph 4, whereas in truth and fact he did not have such a belief. That I would think would be the way the count should be charged.

For those reasons, your Honor, I ask in particular that the first and second counts be dismissed.

(828) The Court: How about the third count?

Mr. Perry: That comes in the general motion made at the beginning. The third count does not charge anything about circular letters. It is causing a false statement to be made to the effect of the Chernoff identification. That is in a different category.

The Court: It is under your general motion but not specifically?

Mr. Perry: Yes.

The Court: All right.

Mr. Hallinan: I will address myself briefly to each of the three contentions made by the defendant. The first is that this does not came within the statute because there has been a failure of proof. I think your Honor can take judicial notice of the fact that United States Savings Bonds are within the jurisdction of the United States Treasury Department, and I think from this record your Honor can conclude—would have to conclude as a matter of law on this particular argument that these people were indeed paying agents. Mr. Heffelfinger and Mr. Miller dealt on that basis.

The Court: What does the bond say on its face——

Mr. Hallinan: The bond says on its face—would you like to see it? It says, "United States of (829) America" and then describes the bond (handing to Court).

The Court: Have you got one where I can read the back, too? I might as well read it all at once.

Mr. Hallinan: I think one of those would be legible (handing to Court).

The Court: All right.

Mr. Hallinan: I am not going to argue any further.

The Court: I don't think you have to. The bank did send the bonds to the Federal Reserve Bank and did get money on the bonds.

Now, what else do you want to say?

Mr. Hallinan: The venue question boils down to this: They say that the venue should be either in Washington or Chicago and not here. They cite the Valente case, and if my recollection is correct, I think that is 175 Fed. 2d.

I would point out to your Honor—your Honor will become familiar with it—but there was a dissent. It was 2-1 in the Valente case.

Recently in 218 Fed. 2d the case of United States v. De Rosier, the facts were as follows:——

The Court: What circuit?

Mr. Hallinan: Down in Florida.

(830) The Court: Anything in the Second Circuit?

Mr. Hallinan: Not squarely on this point, your Honor, no. The facts in that case—and I might say the decision commented on the Valente case and distinguished it—the facts briefly in the DeRosier case are a man was being investigated by a loyalty board, the Post Office Loyalty Board. He was in Florida. He mailed from Florida, Hialeah, Florida, to Washington, D. C., a document containing false statements. They tried him in some district in Florida, I think the Southern District of Florida; he was convicted; he appealed. One of the primary

contentions he made on appeal was that venue was properly in Washington, D. C. not in Florida.

We rely upon, and the Court in that case relied upon, Section 3237 of the United States Code which reads in pertinent part as follows:

"Except as otherwise expressly provided by an enactment of Congress, any offense against the United States begun in one district and completed in another, or committed in more than one district, may be inquired of and prosecuted in any district in which such offense was begun, continued, or completed."

The facts in the De Rosier case are on all (831) fours with the facts in this case. We say that the crime began here when the letters were placed in the possession of the United States Post Office. The Valente says in its reasoning: But the crime might never have been completed because the letter might have been lost on the way to Washington. And we, in so far as that reasoning is used, say that is right, and the DeRosier case recognizes that. The letter might very well be lost and then you would have no completed crime, but that does not detract from the case, as the De Rosier case recognizes. The crime begins once some effective means is taken of putting those statements out of the possession of the defendant. That happened when they were placed in the possession of the United States Post Office.

I have cited in my brief, I think, the paragraph that—just let me read part of it:

"It would be an excess of literalism to say that the appellant was only preparing to commit the offense, and the actual commission thereof had not in fact begun at the time and place from which the letter was sent, mailed, or forwarded, to the Board.

It is no answer to say that, by some fortuitous circumstance, the consummation of the crime might have been frustrated by the loss of the letter in transit, thereby rendering (832) ineffectual the attempt to deliver the false statements. Necessarily, the commission of the offense must be viewed in retrospect. It is often not easy to draw a line between attempt and preparation; the former is such an intentional preparatory act as will apparently result, if not extrinsically prevented, in a crime which it was designed to effect."

I am not going to say much either, your Honor, on the letters. I did not prepare a memo of law because I feel honestly that that is one error where a hundred million cases will not assist your Honor in determining this question. I think whether or not the two statements in the two letters referred to, Exhibits 22 and 23, constitute false statements is a question of fact for the jury.

With respect to Government's Exhibit 22, which is the letter of December 26, 1951, I put on certain witnesses to prove as a fact that he had not been informed. So I say this statement that he makes as I said to your Honor before, is a very cute or clever way of saying to the Treasury Department, "These bonds were cashed in accordance with Treasury Department circular."

I think a false statement can be made in many (833) ways. I think whether or not this constitutes a false statement is purely in the area of a question of fact for the jury to determine.

The Court: There are two questions. It may well be they are not necessarily to be decided.

The first question is whether the conduct comes within the section. The second is whether it comes within the allegations of the indictment.

Now, the section is much broader than the indictment. There are any number of deceitful acts which are covered by that, but for some reason the indictment specifies a false and fraudulent statement as to a material fact and states that the fact was that these bonds were cashed in accordance with certain procedures.

Now, Mr. Perry emphasizes the alleged variation between the literal language of the letter in Count No. 1 and the allegations of the indictment. Now, what is the rule as to conformance of such allegations with the proof? I am not at all sure I would want to rely on it or that it is necessary, but as a matter of general curiosity I wonder if you have explored that.

Mr. Hallinan: No, I have not, your Honor, because my opinion has been all along what it is today, (834) that whether or not this constitutes a false statement within the indictment depends on determining what the man was saying in this particular sentence, and that seemed to me to be purely a question of fact.

The Government, having shown that he was not informed, what was he saying to the Treasury Department here? He was saying simply and shortly in a manner different and more evasive than a flat and unequivocal statement, but he was saying nonetheless to the Treasury Department, these bonds were cashed properly.

As your Honor knows, I have briefed many areas of the law here which I did think would present your Honor or myself with problems, but this one I did not go into at all because I felt it was an area where law could not help, that it was purely a question of fact.

The Court: Well, if we are faced with the question that Mr. Perry presents it may be so, but I was wondering before we got into that whether we were faced with that or whether there was any procedural step to be taken now which avoid the resolution of that question.

(835) Mr. Perry: Your Honor is aware that there is a question of immaterial variance. If I am alleging a date as of April 2 and the proof shows April 3, that of course would not affect the validity of the count, but we are not dealing here, I respectfully suggest, with any question of an immaterial variance. What we are confronted with, your Honor, and I have been interested in the way Mr. Hallinan was explaining it to you, he took a lot of words to say, "This is another way for the defendant to say this. He said it evasively, he did this, that, the other thing."

As a net result of listening to Mr. Hallinan you can appreciate that he is aware—at least he is aware now—that the defendant did not say what is charged in the indictment. He says that is the result of what he said. That may be, but that is not what he said in the indictment.

The Court: Forgetting the question as to whether it is covered by the statute, just on the question whether there is a material variance as to the indictment, I was wondering if, as far as the adequacy of the pleading is concerned, it is not enough that you knew what the representation was and that you were not (836) taken by surprise with respect to what they thought came within the statute.

In other words, just for the sake of argument, if we assume that the language of the indictment does not constitute a literal description of the letter relied on to prove it, I would wonder whether that

would be a material variance anyhow because you obviously knew what statement the indictment talked about. Its significance as a matter of law turns upon the language of the statute rather than the indictment.

Mr. Perry: Except as to the extent that an indictment, as your Honor well knows, frames the charge and all the defendant is called upon to do is to meet the charge, and if he meets the charge the fact that you may have shown him guilty of another crime does not transpose over and prove him guilty of the crime charged in the indictment.

The Court: In other words, what you are saying is the variance is material.

Mr. Perry: Frankly, Judge, this has been researched. I made it clear to your Honor we have not been luxuriating in the letters. We have only had (837) them a short time.

Mr. Hallinan: September 19.

Mr. Perry: It may be. But it was not until the opening that it was made clear to us that the letters were the basis of the indictment. There is no way of our telling. We have been having this thing researched and I would expect to provide your Honor with—I have not had time to do it myself, but I would expect to provide you with some authorities.

The Court: All right. I will wait for your authorities on that, if that suits both of you. You can both get me some. Even though you think it is ultimately going to be a question of fact, and I assume you cannot find anything dealing with this statute in particular, ordinarily it helps to know what the statute is about, what its legislative history is, what it is aimed at. I do not expect you to be able to give me the general authorities as to what

variance in language is too great and what is not. That is the sort of thing that is usually not worth very much because each case is so different from each other, but I would appreciate whatever you can tell me about the section.

Mr. Perry: Your Honor, may I answer for the (838) record, if not for your Honor?

The Court: Yes.

Mr. Perry: Mr. Hallinan said insofar as this being a matter within the jurisdiction of the Department or agency, that your Honor may take judicial notice. I very respectfully suggest that the question of whether or not this is a matter within the jurisdiction of the agency is one of the elements of the crime, and I will establish that in a second. It is one of the elements of the crime, and proof in a criminal case cannot be taken by judicial notice that one of the elements of a crime may or may not exist.

The Court: You go ahead and get your authorities for me on any of these points. I won't definitely conclude any of them until you get your brief in. I assume it is going to be in the next day or so.

Mr. Perry: God willing and my health holding up.

The Court: You look in good health.

We will take a five-minute recess. If your witnesses come in, let me know right away.

(Short recess.)

(839) (The following proceedings were held in the absence of the jury, at the bench.)

The Court: As I understand it, the next two witnesses are going to deal with the testimony of Mishel as to burnt money. That is going to get us into the question as to the proper scope of the defense, and I thought we would go into that now,

because if we have any fundamental differences of theories on that that we ought to resolve them.

Mr. Rosenblum: Your Honor, you said that this would be a mater of defense and we would have to call them in that order. Mr. Hallinan submitted a memorandum in which he said: I ask your Honor, I tell you the reason why I feel that the Government's case should come in without any attempt on the part of the attorneys for the defendant to bring out such matters and on which we are now making them their own witness.

The Court: We come to the next step. The question is, if you intend to prove, just assume for the sake of argument that somehow having that safe deposit box—this is completely ridicuious or probably a ridiculous assumption, but having that safe deposit box with Miller and Mishel jointly constitute a defense, then I say if you want to (840) buttress Mishel's testimony that you could produce witnesses on the defense to do it, but if all you do on cross-examination is develop from Mishal something which you say is a lie on a collateral matter, then you can't call witnesses on the defense to knock down the lie that you developed on cross.

Mr. Rosenblum: No. The second question, Mr. Mishel came back and added something, and I asked to strike it out but you would not. You said, "I am going to let that stand." I asked one question. There was an answer, all of a sudden we get back in return a long statement and, "I can't answer that yes or no, I must answer in my own way." I said, "Can't you answer yes or no?" You said, "I am going to let him answer it in his own way." Let us assume that he at that time said——

The Court: Because I didn't think it was that

kind of a question. This information didn't come out on one of those.

Mr. Rosenblum: Yes, I think it did. When he asked some question he came back and said something about the burned money.

The Court: This was after you had gone into the whole subject of the safe deposit box.

(841) Mr. Rosenblum: I think we have two separate things. We were discussing before the matter of burned money, if you recall. Now, talking about the safe——

The Court: That came in with the discussion of the safe deposit box. He said there was burnt money in there.

Mr. Hallinan: It came in in another way. The burnt money came in—I appreciated Mr. Rosenblum's position at that particular time. It was quite obvious, and I recognized it from the start. It was a dilemma for them. Mr. Rosenblum was trying to attempt to establish by extensive interrogation that Mishel was from 1945 to 1949 a businessman, a legitimate businessman. Quite a dilemma. I realize that. But in response to several of those pressing questions Mr. Mishel told him about the burnt money in the vault. I didn't develop the vault question at all. I objected at that time, I objected twice. And he went into the vault for the sole purpose of showing what a monstrous ridiculous lie this was. They can't set up a witness just to knock him down. They make the witness their own and they are bound; even if they don't make him their own witness they are bound on the collateral (842) matters.

Mr. Rosenblum: I think you will find there are a number of instances where the witness himself

brought in matters when you were questioning him. I wasn't responsible for it.

Mr. Hallinan: I will agree with that, but it has nothing to do with this. Those two matters were in perfect response, I have no doubt about that at all. I can go to the record and ascertain it. They were in perfect response to the question asked by Mr. Rosenblum.

The Court: In the absence of your showing me to the contrary in the record I won't be disposed to go into the proof on the safe deposit box or burnt money. If you want to support some collateral testimony of Mishel which you think develops your defense or if you have a defense that you want to prove unrelated to the truth or falsity of Michel, I am glad to go into it, but we are not going to go into collateral false testimony of Mishel.

Mr. Perry: I would add this, to the discussion at the bench. I am not sufficiently acquainted with the record that I document it by page number on what we were discussing. But leaving that aside for the (843) moment, in any case, of course, the conduct of the trial and the proof that is admitted to a very large extent rests in the discretion of the Court. I can appreciate that there are rules to be followed. I think your Honor will see in the memorandum that we submitted, after a quite exhaustive consideration of the cases, the net result of the discussion was that what is or what is not collateral, that, too, rests to a great extent in the discretion of the Court.

All of this, just to make the point, that I am leading up to is this: Mishel, without characterizing his testimony, presents a difficult witness to attack because of the refusal on his part, not questioning

motive, the refusal on his part to be pinned down better to specific acts and events but rather spreading them over a period of years. It is just literally impossible to show that a thing that isn't so. So that ultimately it becomes a question of his word as against the word of somebody who may deny it. That is the type of witness, in general, that he was.

Now there are several areas about which he did take a specific position. One area in particular (844) is this vault incident. And that happened back in 1953 I believe, around that time, 1952 or 1953, when he had the New York County District Attorney's Office take him up to the bank, where he came in with a key and said, "This is the key to my vault." Then they said to him, Where is the vault?" In the first place, the key, we could establish that has nothing to do with this bank. And, secondly, the place where he pointed to his box and said, "There," the number that box had, the number wasn't in proper sequence. That was checked. The Mosely Safe Company up on Fifth Avenue, your Honor, put the boxes in the bank, and those boxes have not been changed; they are there in the identical form that they were back when they were put in there years and years before Mishel was ever heard of. It is a thing like that. Your Honor might say, well, that is collateral. I am not going to argue that point. Perhaps it is collateral, if your Honor feels it is. Let us assume it is collateral. But, frankly, we ask the Court in its discretion to permit us to show that this man Mishel as of today, not 1953, when this happened, as of today is lying. We feel we can show it not by witnesses who may have an interest in the case but very cold (845) disinterested persons.

The Court: Well, that puts us in the awkward position of your having given Mr. Mishel—I mean, this whole discussion of that vault, as I remember it, was brought in out of nowhere on cross-examination, and I don't think that we can go to a situation where you tender a subject matter on which you expect a situation to lie on a collateral issue and then prove that he lied as part of your defense. We are here to try the material issues and not collateral ones. So I don't think I will take that testimony if those are the witnesses that we are waiting for.

Mr. Rosenblum: You recall there were a number of instances where a question was put that I thought was subject to a possible yes or no answer, and your Honor at that time said, when he said, "I would like to answer that in my own way, Step back, Mr. Rosenblum," as he directed me to, and you said, "He can answer it in his own way," and I said, if you recall, "I think it is susceptible to a yes or no answer," and you said, "No, I am going to overrule you." Then he brought in a number of instances matters which—let us assume that we (846) deem were collateral—but because your Honor permitted him to answer it in his own way and then he went into matters which you might now say are collateral——

The Court: I don't think you are going to find that that was the situation. In addition, I don't think you are going to find very many cases where the form of the answer was an issue between us or in any case where you ask me to strike that I didn't. There may have been one or two, but there were not many. There was a substantial part of of his cross-examination where I would have granted

a motion to strike at the time and where I would have stricken the answer if you had wanted me to. But I deliberately withheld any action pending your request because it seemed to me that you had a method in permitting him to act exactly as he did, and I didn't want to in any way disrupt your handling of a witness other than by a request of one of counsel.

Mr. Rosenblum: I don't know what you refer to when you say method in handling——

The Court: At one time you deliberately encouraged him to talk in a rambling fashion and I didn't interrupt.

(847) Mr. Rosenblum: No. These instances I was pointing to was where I insisted that he could answer "Yes" and your Honor said, "No, I will let him answer it in his own way."

The Court: There were one or two of those. I don't think this is one of them. As to Mishel, there was more than one or two. There have been a couple with other witnesses. But this wasn't one of them as I recall it. If you can show me in the record that it is, we will continue our discussion on that.

Mr. Rosenblum: You gave us, as you recall, the other day——

(To Mr. Hallinan) Do you want to answer that?

The Court: There is nothing for him to answer yet because I haven't——

Mr. Rosenblum: The other day you said you would make available to us the statement on Irving Mishel dated February 28, 1955. And I don't know whether you said you just wanted us to read it or wanted us to use it.

The Court: I said I gave it to you for whatever

request for relief you might see fit to base upon it, something like that.

(848) Mr. Perry: Does your Honor have in mind—I haven't discussed this with Mr. Rosenblum so I don't know what is in his mind—but does your Honor have in mind that perhaps we can offer it in evidence, or does your Honor want that we should recall Mishel?

The Court: All I did was read that document and conclude that its secrecy was not essential to the Government for any reason that its sole force would be exhausted in this lawsuit. Therefore it seemed to me that you were entitled to it as much as the Government, and I gave it to you for whatever you wanted to do with it. When you ask me to do something about it I will then pass upon the propriety of what you ask me to do.

Mr. Perry: I would do one of two things; either we offer it in evidence or we ask that Mr. Mishel, who is in the building, that we bring him up here so I can examine him on subject matter that is in here in the statement. I think I should cross-examine him or question him about it.

Mr. Hallinan: I will object to both the recalling of the witness and the introduction of this document in evidence upon the grounds that it would (849) have to be—the procedure would have to be on the theory that there is something in this inconsistent with the witness's testimony. If there is any inconsistency it is not with the tenor of what the witness was testifying to, and it is not of sufficient value, and from the Government's viewpoint many times—well, leaving that aside, it might be more prejudicial to the Government than it would to actually shed light upon this proceeding, as far as helping us to

determine the ultimate issues here. I don't think that it is inconsistent with the tenor of what the witness testified to from the witness stand.

I think, also, it does not reach the two cases that your Honor was referred to, the Krulewitch case and the Gordon case. If you will recall there, in the Krulewitch case, I think it was very similar to the Gordon case where certain people had not been implicated. The defendant had not been implicated up to a certain point. That is an inconsistency that goes to the very heart of the case.

The Court: Mr. Rosenblum, do you want to say something? I have heard enough from Mr. Hallinan.

(850) Mr. Rosenblum: Yes. I thought I would bring this to your Honor's attention. If you will recall, on the bottom of the first page, where Mishel says, in substance—well, I will read it so that I am not accused of using my own language.

"I bragged to Wissenfeld in the presence of Patrick Maeken, another prisoner, that the Miller case could not be tried without me and that I had the FBI and the Assistant U. S. Attorney in a position where I could embarrass them if they didn't keep their promise to me to go to Judge Mullen in General Sessions Court, New York County, to have my State sentence of 10 to 20 years reduced."

The Court: Then he goes on to say that there was no such promise and that this was an attempt to impress these two jail acquaintances.

Mr. Rosenblum: That is right. I thought it was a question for the jury to say whether or not even had he added the other part, having written—he said that he said something to the other witness and he said something to Wissenfeld. Then there are letters.

Mr. Perry: In here there is a reference to (851)

two letters he sent to the U. S. Attorney wherein apparently—I don't know; I read it hurriedly—wherein apparently he said that unless they come in and talk to them he is going to cause some trouble for them. Now he denies that he wrote it or he said Wissenfeld put him up to writing it. But I should think we would have to have those letters produced.

The Court: Those were the writs that Wissenfeld brought? He testified about those.

Mr. Hallinan: While they are looking for it, if your Honor will recall, in both the Krulewitch case and the Gordon case this one statement or series of statements made by one witness was the crucial testimony in the case.

The Court: I realize there is no comparison between this——

Mr. Hallinan: I mean, you can take Mishel's testimony out of this case and we still have a prima facie case.

The Court: I don't think we have to cross that bridge yet. The fact is that I feel that the letter is substantially consistent with Mishel's testimony on this very subject matter and I don't (852) think the subject matter was of the greatest materiality anyhow. But, in fact, he told us that he told a whole lot of untruths to his jailmates to impress them. He says in that letter that one of those untruths was the part that Mr. Rosenblum read. Now the important thing is that it was an untruth and I don't think we have—he said it was an untruth in the letter, he said it was an untruth here on the stand. That he adds to somewhat greater specificity to his untruth in the letter than he gave us on the stand I don't think is of sufficient materiality to bring him back, because in both he says it was an untruth. So I will deny both of your applications.

Colloquy of Counsel

Mr. Perry: On page 3, on the bottom of the letter he says: "While talking to Wissenfeld he kept telling me not to do anything for the authorities unless they did something for me first and Wissenfeld himself wrote in his own handwriting several letters which he told me to copy in my handwriting. Amongst those letters was a letter dated January 12, 1955, addressed to Mr. Good of the FBI asking for a list of FBI agents who interviewed me and in which it was stated"—and he has quotation (853) marks—"'All the FBI agents' promises mean nothing but conversation.' Jake told me that this would embarrass the FBI and they would have to do something for me. He composed a similar letter for me addressed to the U. S. Marshal. I have I believe at least two other letters drafted by Wissenfeld in his handwriting which are addressed to other agencies."

As I read that letter, he has sent letters out——

The Court: He said he has two letters by Wissenfeld addressed to other agents. I don't know whether he sent them or not.

Mr. Perry: I don't know about that. But he certainly did send a letter addressed to Mr. Good of the FBI.

The Court: I don't think that adds anything to the value of the statement at all or as to the development of any inconsistency with his testimony.

Mr. Perry: It goes to bias and interest of the witness. Judge, even if he doesn't have a blessed promise to do anything for the man, still, if it is his belief that he got a promise from agents and if (854) he is trying to coerce the Government, perhaps unfairly, perhaps coerce them into doing something for him, I should think we could go into that meticulously, your Honor. We certainly didn't go into it——

Mr. Hallinan: The witness testified himself, and he made no bones about it. He hopes. He has the greatest hope in the world.

Mr. Perry: But if we can show back in 1955 he is writing letters to Government agencies saying, "Keep your promises to me,"——

Mr. Rosenblum: It is more than a hope. He has made a statement that they were promises.

The Court: The statements that he made, he says, in the very letter you want to cross-examine him, those he says were false statements. In other words, he says in that letter, "I made a false statement to Wissenfeld." That is the tenor of that letter. On the stand he told the jury that he told fairy tales to Wissenfeld. He has specified certain fairy tales here. He specifies slightly different ones there, or some with greater specificity there. But I don't think that is a material difference from his testimony, and I don't think (855) it would justify me in bringing him in now after the Government has closed its case, just on those alleged variances.

Mr. Perry: Judge, so far as the Government closing its case is concerned, I know your Honor would not penalize us for that because we have acted as promptly as we could. The witness was off the stand before this, it is a court exhibit——

The Court: I think I gave it to you, as I recall, yesterday morning.

Mr. Rosenblum: Yesterday.

Mr. Perry: But he was off the stand.

The Court: That is right. But I don't see that that is crucial either. I think that the heart of the matter is that it isn't worth the time of the Court to go any further with respect to this letter because I think it is in substance and in weight exactly what he gave here on the stand. So, now, I will deny your applications on that.

Colloquy of Counsel

Mr. Rosenblum: Exception.

The Court: Where are these witnesses?

Mr. Rosenblum: They are supposed to be on their way down.

Mr. Hallinan: As to Agent Sershen, do you (856) want to keep him around?

Mr. Rosenblum: Agent Sershen is here. There are a number of things I didn't go into because of your Honor's ruling that we can take up on the matter of the defense, going into greater detail about some of the things that occurred at the time he was with Mishel. If he intends to go back, maybe I can put him on now and question him.

The Court: Recall him now as a defense witness?

Mr. Rosenblum: Either that, or permit me to reopen it.

The Court: No. You can call him as a defense witness if you want to.

Mr. Rosenblum: May I have a few minutes? I haven't been out.

The Court: We have had an hour and five minutes now. As a matter of fact, he rested at about 2.30. It is an hour and a quarter.

Come on, get the jury in. Call the witness to the stand.

Mr. Rosenblum: If we put the defendant on the stand, tomorrow morning may I put on another witness that I intended to put in first?

(857) The Court: We will see what Mr. Hallinan says. I don't want any unfair spread between the direct and cross. We will see how that turns out.

Mr. Rosenblum: I will just cover as much as I can this afternoon on those things which I don't think I will be subject to cross.

The Court: We will see. Just go ahead.

(Jury in box.)

VOL.

II

No. 581

Docket No. 24457

United States Court of Appeals

FOR THE SECOND CIRCUIT

UNITED STATES OF AMERICA,

against

JAMES W. MILLER,

Defendant-Appellant.

JOHN T. [illegible] Clerk

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

S. D. N. Y. File No. C-146-97

APPELLANT'S APPENDIX

Volume II— Pages 504a-931a

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INDEX

	PAGE
Statement Pursuant to Rule 15(b)	1a
Indictment	3a
Judgment and Commitment	5a
Government's Exhibit 22	6a
Government's Exhibit 23	7a
Government's Exhibit 24	8a
Testimony	10a
Motion for Mistrial—Denied	435a
Motion for Judgment of Acquittal	479a
Argument on Motion for Judgment of Acquittal	484a
Excerpts from Government's Exhibit 71 Read into Record	787a
Renewal of Motion for Judgment of Acquittal	802a
Motion for Mistrial—Denied	808a
Denial of Motion for Judgment of Acquittal	808a
Summation on Behalf of Defendant	817a
Charge of the Court	862a
Verdict	912a
Motion to Increase Bail	912a
Motion to Set Aside Verdict	913a
Denial of Motion to Set Aside Verdict	919a
Statement of Defendant's Counsel Prior to Passing of Sentence	921a
Sentence	928a

GOVERNMENT'S WITNESSES

Nat Chernoff:	
Direct	10a
Eugene Paul Arey:	
Direct	11a
Cross	18a

Government's Witnesses (Continued)

PAGE

Irving Mishel:
Direct 19a
Cross 57a

Sidney Hack:
Direct 248a
Cross 251a

John J. Brennan:
Direct 251a
Cross 252a
Re-direct 253a

Virginia Graef:
Direct 254a
Cross 265a
(Recalled)
Cross 305a

William Heffelfinger:
Direct 273a
Cross 280a
Re-direct 304a

Francis Horan, Jr.:
Direct 338a
Cross 344a

James J. Lucey, Jr.:
Direct 359a
Cross 365a
Re-direct 367a

Fred Heddesheimer:
Direct 373a

Elizabeth Skotchdopole:
Direct 378a

Government's Witnesses (Continued)

PAGE

I. Alfred Levy:
Direct 382a
Cross 385a
Re-direct 386a

Max Dorff:
Direct 387a
Cross 394a

Edward F. Sweeney:
Direct 397a
Cross 400a
Re-direct 424a

Sam Siegel:
Direct 430a
Cross 435a
Re-direct 457a

Norton Schnabel:
Direct 458a
Cross 460a

George J. Sershen:
Direct 464a
Cross 469a

DEFENDANT'S WITNESSES

John J. Brennan:
Direct 504a
Cross 528a
Re-direct 547a

Defendant's Witnesses (Continued)

PAGE

Kenneth G. Wilmot:
Direct 554a
Cross 560a
Re-direct 578a
Re-cross 581a

James W. Miller:
Direct 583a
Cross 662a
Re-direct 760a

John A. McAvinue, Jr.:
Direct 792a

Kenneth Rayburn:
Direct 799a

JOHN J. BRENNAN, having been previously sworn, resumed the stand, and called as a witness on behalf of the defendant, testified as follows:

Mr. Rosenblum: I will call another witness and Mr. Perry will examine him.

Mr. Perry: I take it Mr. Brennan need not be sworn again.

Mr. Hallinan: No.

Direct examination by Mr. Perry:

Q. Mr. Brennan, when you were here with us early this week I think you told us you are the—what? A. Cashier.

Q. What position did you have at the bank? (858) A. Cashier, presently I am cashier.

Q. In the period from December 1949 to about February 1950 what position did you have at that time? A. Well, actually from—I would say from December 1949 to January '50 I was the chief clerk, and the manager who had been my immediate superior was taken sick in November of '49, didn't return to the bank, so around January 1950 I was made office manager.

Q. What were your duties as chief clerk? A. To assist the office manager in the general operations of the bank branch.

Q. What did your duties become when you became manager? A. Well, I was then in charge of operations at the bank branch.

Q. Are you acquainted with the procedural setup in the operation at the branch? A. Yes, sir.

Q. Will you tell us something, please, about the tellers and how they functioned, particularly with reference, say, to getting money in the morning and going out to their cage, at the close of day what do they do with the money and things of that nature? (859) Will you tell us, please?

Mr. Hallinan: I don't know that this is relevant.
The Court: We will find out. Go ahead.
Mr. Hallinan: All right.

A. In the mornings the tellers are let into the vault by the manager and the chief clerk of the branch.

Q. Is that the back—would you look at the chart behind you, please, Mr. Brennan? You refer now to the vault, the box marked vault, is that right? A. That is right.

Q. Will you tell us what is in the vault, please? This box appears here, is that right? A. That is right.

Q. Tell us what is in the vault. A. There are safe deposit boxes in the vault. There is a chest that contains the coin that the tellers handle during any day——

Q. Just a minute. As you are looking into the vault, as I would be looking into the vault, on the lefthand side, what do you have? A. There is a bank of a couple of rows of safe deposit boxes and next to that bank of safe deposit (860) boxes is at the top the coin chest which opens up under key lock.

Q. Tell us something about that, please. How many coin chests are there? A. There is one coin chest that has two doors, two swinging doors that swing open when unlocked.

Q. Is there anything in there that each teller has access to only? A. No, sir. One teller has access to the coin that is in that chest, because one teller is designated as coin teller. It is under his care.

Q. Do the tellers, the other tellers have chests in there, other chests, where they keep their money at the close of the day? A. Below the coin chest is four separate chests that operate on two combinations on each door. The teller has a combination of the bottom combination and the office management has the top combination.

Q. At the end of the business day what would a teller do, for example, with the money that that teller has at

the close of the day? A. After he has proven his money he packs his money away in a small chest, takes whatever surplus coin he may (860a) have left over and takes that on a cart, wagon cart, to the vault under the supervision of one of the management people, and puts it away in his separate—in his own individual chest, locks it. And he is then through for the evening.

(861) Q. Who has access to those chests? I am talking about the tellers' chests now. A. The teller, only with somebody from management.

Q. Did you finish your answer? A. I say, the teller, with someone from management. There must be two people that go into the tellers' chest.

Q. How many keys are there to each of these chests? A. These chests do not work on key. They work on a combination arrangement. There are two combinations; the teller has one and management has the other. It is dual control at that point.

Q. Are you acquainted with the duties that the persons have who take care of the bond cash at the bank? A. Yes.

Q. Were you acquainted with the duties during the time in issue here? A. Yes, sir.

Q. Would you tell us, please, what would the customary procedure be for the teller cashing bonds; what would the teller do in particular with the bonds that have been redeemed and with the redemption forms? (862) A. The teller who was assigned to that task would collect them day by day from the other tellers, also account for any that he might have cashed himself. And periodically, about twice a month, send those cashed bonds for collection to the Federal Reserve Bank. At the end of each evening any bonds that had been cashed during that day would be charged to the Federal Reserve Bank against the money given out.

Q. Physically, what would be done with the bonds that

have now been redeemed, the bonds themselves? A. Those bonds redeemed would be under the control of the bond teller and they would be stored away in the teller's chest with his money over night, from night to night.

Q. What we are talking about now is the chest that is in the vault, is that correct? A. That is correct.

Q. Tell us if you will, please, what procedure is followed with relation to the redemption forms. A. The redemption forms were also held by the bond teller, and about also twice a month as these bonds were sent down to Federal Reserve, the offsetting redemption tickets would be turned over to the chief clerk and they would be inserted into a monthly work (863) folder which was, in a sense, a file of miscellaneous work handled during that month. They would be left stored in those work folders, and at the end of the month the work folder it would be put away in a semi-permanent storage.

Q. Perhaps I didn't follow you. What would the teller do at the end of each day? Would she give them to somebody or would he or she hold on to them? A. No. That bond teller would hold those redemption tickets for approximately two weeks.

Q. Excuse me. Where would they be put while the teller is holding them for this two week period? A. Well, it is a little hard to say. They was no specific, to my knowledge, regulation covering where they could be stored. I would say the teller could lock them in their cash drawer or they could lock them away with the bonds in the chest each evening.

Q. You differentiate between chest and cash drawer, is that correct? A. Yes. The chest being the one in the vault and the cash drawer being the teller's own cash drawer at his station, at the teller's stations.

Q. In other words, each teller at the place (864) where

they worked in the bank would have their own cash drawer, is that correct? A. That is true.

Q. Will you tell us, please, something about the cash drawer? A. Well, the first or top cash drawer was to the left-hand of the teller as he faced the public. It was broken into small compartments so that different denomination bills could be put in different compartments so that they wouldn't be confused. And behind those compartments was a large space of, roughly, fifteen feet depth from the back of the drawer and about—I am sorry; fifteen inches deep and about eighteen inches across which would probably be the width of the drawer.

This drawer has a lock on it which the teller has the key for. Below that drawer is a certain drawer which is not compartmented. And the tellers will occasionally use it during the day for surplus packages of cash that they might have on hand if it was more than could be held in the first drawer.

Q. You spoke of the tellers having the key to cash box, is that right?

(865) Q. Does anyone else have a key but the teller? A. No, sir. The teller is the only one that would be permitted to carry a key. There were two keys; the teller had one and one key was kept in a key control. One extra key. In the event that the other key were lost the extra key could be put into use.

Q. You say one key the teller had, is that correct? A. That is correct.

Q. Was that turned into the bank at the end of each day by the teller? A. No, sir.

Q. Tell us what the practice was with respect to that key? A. The tellers were permitted the carry the key on their person. There was never any money locked in the drawer at the end of an evening and it was management's responsibility to check the drawers to see that they were

empty and that all the cash was transported to the vault. So that there was no reason to lock the drawer over night.

(866) Q. What about the other key you spoke of, the control key? A. We have a key control metal box on a wall in the office, and extra keys are maintained in that box on a numbering arrangement. Each key is given a certain number.

Q. Who has access to those keys? A. The manager and chief clerk. Either one might have the key to that key chest.

Q. Is it their responsibility to maintain control over that? A. That's right.

Q. Were the desks in the bank, desks of the officers, also locked and did they have keys for those? A. Yes, each officer had a key to his own desk, and it was the practice and recommended that the desks be locked at night by each of them.

Q. Was there any other key to those desks than the keys the officers had? A. Yes, the same arrangement I described for the tellers' extra key was maintained for desk keys. They were kept in a locked key control case, that same case I spoke of before.

Q. And that would be under the control, you say, (867) of the chief clerk or manager? A. Yes, sir.

Q. You say it was under the control of either of those persons. Would you tell us, please, just exactly; and specify what you mean by that? A. By "control" I mean that not any employee or officer, I guess, for that matter either, could go and open that key control chest. They would have to come to the chief clerk or manager and have him go with them to get a key out of that chest, and he had a key to open it. In other words, it was locked all the time.

Q. It was kept locked? A. That's right, yes.

Q. Will you tell us, please, what was the practice in

the bank during the period from 1947, let us say, to 1950, '51, with relationship to use—I withdraw that—with relationship to access to the safe deposit boxes by customers?

Mr. Hallinan: I will object to this, your Honor. May we approach the bench?

The Court: Come on.

(The following proceedings took place at the bench, not in the hearing of the jury):

Mr. Hallinan: I think this is the very area which we have discussed, and your Honor has already ruled (868) on it. In so far as they are seeking to show that what the tellers had to do with their cash boxes, as they call them, in this room, I see no objection to that, but this question is, I think, in that area where they are going to try to knock down Mishel after having set him up on that safe deposit box.

He was asking what was the access of customers to safe deposit boxes.

The Court: You went into a discussion of what happened in the vault room yourself.

Mr. Hallinan: No, not once.

The Court: That is where they filled out the bond redemption forms.

Mr. Hallinan: No, it was one of those little rooms outside.

The Court: I mean one of the little places outside.

Mr. Hallinan: No, I brought out nothing about the vault room—

Mr. Perry: It seems to me we should be able to show——

The Court: Go ahead and we will see what happens.

John J. Brennan—for Defendant—Direct

(Proceedings were resumed within the hearing of the jury as follows):

(869) Mr. Berry: May I have that last question reread, please?

(Question read.)

Q. Or depositors, perhaps I should say. A. I just like to say at this point that I was first employed at the 48th Street office of the bank in June of 1948.

Will you preface your question——

Mr. Hallinan: Go ahead, finish your answer.

A. From June, 1948, until '51 I could tell you what it was at that time.

Q. Start out, then, with the period you are aware of, June of '48. A. For a customer to get access to his safe deposit box, the customer was issued a key to the box and our guard, our floor man, he functioned in both capacities, has a master key to the other lock in any safe deposit box. There are two locks. That again is what you might call dual control. The customer has one key, the guard has the other. One key alone will not open the box. It requires two keys at one time to open the box. The customer makes it known to the guard that he wishes to go into his—get his safe deposit box and examine the contents. The guard will open the (870) grill door or gate to the vault and then insert his key in the master lock and the customer inserts his key in the other lock, they turn them open and take out the safe deposit box. The customer is free to examine the contents of the box in two small cubicle rooms out in front of the vault. When he is finished, he calls the guard, the guard goes back into the vault with him, reinserts the safe deposit box in the compartment, locks the door, hands the customer

back his key, takes his master key out, closes the gate and the transaction is over.

Mr. Hallinan: I now renew my objection and move to strike this on the ground it is irrelevant under your Honor's ruling.

The Court: I will let it stand. Go ahead.

Mr. Perry: I did not get the ruling.

The Court: I said I will let it stand. Go ahead.

Mr. Perry: Thank you.

Q. You spoke of two keys, one key being in the possession of the customer. A. Yes, sir.

Q. And the other key being in the possession of the guard.

(871) Were there duplicate keys to the guard's key?

The Court: I do not know how far we want to go into this matter.

Mr. Perry. There are just one or two questions.

Mr. Hallinan: I will object to one or two questions. I object.

The Court: I think that I will sustain the objection to any greater particularity on this. I do not see where it gets us.

Q. Mr. Brennan, I want to direct your attention right now to these redemption forms. I think you called them redemption tickets.

You were telling us that periodically the redeemed bonds would be sent to the Federal Reserve Bank. A. That's right.

Q. And you said periodically also something would be done with these redemption tickets. A. (Witness nods.)

Q. Will you tell us, please, from that point on what

would be done with these redemption tickets at the tim say, when the bonds, the redeemed bonds, are sent t the Treasury? A. Yes, the bond teller would give the to the chief clerk of the office. He would take them an put (872) them into a monthly work folder.

Q. Excuse me. You said "he." I do not know whon you mean by "he" the teller or the chief clerk. A. Th chief clerk.

Q. I see. A. They would remain stored in the work folder until the end of the month, the last day of the month or the first day of the new month, at which time the work folder containing these bond tickets and other miscellaneous papers, etcetera, that folder would be put in a cabinet, a locked cabinet, in the storeroom of the bank and left in semi-permanent storage.

Q. Where was the storeroom located? A. On the balcony level of the bank, a room behind the balcony. The door to the room opened to the balcony of the bank.

Q. How was access gained to this storeroom?

The Court: I am interested in getting a certain amount of background, Mr. Perry, but I really wonder what you are doing.

Mr. Perry: May I come to the bench and explain?

The Court: Yes.

(Discussion off the record at the bench.)

Q. Mr. Brennan, are you acquainted with the (873) instructions that were given to tellers say in the period 1949 and 1950 with relation to the cashing of bonds?

Mr. Hallinan: I will object to the form of this question unless it is limited to the situation we are confronted with in this case, your Honor.

The Court: I will take it. Go ahead.

A. Yes.

Q. Will you tell, please, what those instructions were? A. Well, I will put it this way, that I have tried to recollect about what instructions were or what form they were in during that period of time. I was relatively new in the business at that time, and I was instructed frequently orally on how to conduct transactions of most any sort that would come up in an operating day, and I believe that whatever instructions I might have been acquainted with for the cashing of bonds and would have expected the tellers to be acquainted with might have come to me orally. I don't remember actually specifically receiving any written instructions covering the cashing of bonds although I know that there was—there were probably several operating circulars in effect from the Federal Reserve Bank as agent for (874) the Treasury Department covering the cashing of bonds, in various instances how they should be handled, how they should be inscribed, signed, etcetera.

The tellers were permitted to cash bonds for customers and were expected to get identification or know the customer.

Q. Keep your voice up, please. A. I say they were expected to get identification or know the customer for whom they were cashing bonds.

Q. Tell us, was there any procedure set up by the bank with relation to the cashing of bonds, let us say, by total strangers? A. Well, there again I would say this, that if a total stranger came into the bank and wanted to cash a Series E bond, that he would have been referred to somebody like myself on the platform, and we would ask him for identification, and if we could be satisfied with the identification we would then have him fill out this redemption form or ticket that we spoke of before and possibly make some notation as to what the identification consisted of and then——

Q. Where would you make that notation, Mr. Brenna
A. Normally, on the bottom last line of that form.

Q. Of the redemption ticket? (875) A. Yes, that's rig

Q. Might there be any other notations made on the
demption ticket? As a practice, I mean. A. Of wh
sort?

Q. I am not telling you; I am asking you.

Would anything else be done with the redempt n tick
except perhaps noting the basis of identification? A. N

Q. Tell us, if you can, please, whether or not there wa
any established procedure of making any notations on th
bonds themselves. By the officers. I am not referring to th
tellers. A. Well, there again I don't know of any specifi
established procedure. I can tell you what I might hav
done in these instances. I might have made some notation o
the identification that I obtained from the person wh
wanted to cash the bond and note that there on the las
line and initial the bond and give it to the customer an
direct him or direct the floor man to take the customer t
the teller, any teller, and have it cashed.

Q. You said initial the bond. A. I meant initial the
redemption form.

Q. As a practice, would the bond itself be noted (876)
or marked in any way by an officer if an officer were mak-
ing that identification? A. No.

Q. Would you tell us, please, what was the practice in
the bank, if there were any, with relation to cashing bonds
for strangers where the stranger is introduced by a known
depositor of the bank? A. There would be no specific
instructions, I would say. If a customer were to introduce
a person who was the payee on a bond and said that he
wanted to identify him so that he could cash his bond,
that usually is enough identification to my way of think
ing and I believe to anybody who worked in the bank at

the time. Firstly, we don't wish to embarrass our customer by asking for additional specific identification from the stranger or the person that he introduces, and I might make a notation on the redemption form that our customer, say it might be John Smith, introduced John Brown, who cashed the bonds.

Q. But the question I asked you is, was there any practice with relation to who should make the identification with regard to instances such as I put to you of strangers being identified by known depositors in connection with the cashing of bonds? (877) A. No, I don't think—no, no specific practice covering that or recommendations or procedure covering that type of a transaction.

Q. Was that an area, for example, where a teller might himself or herself accept the identification by a known depositor and cash the bonds? A. It could be, yes.

Q. And it could also be, I presume, a situation where a bank officer might make the identification? A. Yes.

Q. Mr. Brennan, when you last testified you told us, did you not, that Mr. Mishel was known to you in the bank? A. Yes, he was. I guess you asked me that question before.

Q. He was a depositor, was he not? A. Yes, he was known as a depositor in the bank, that's right.

Q. And the period when you started in the bank in 1948 through, let us say June or July of 1950—I will withdraw that.

From the period when you started with the bank in 1948 up through and including say, March of 1950, had you seen Mishel in the bank?

(878) Will you tell us, please, if you can, whether or not you saw him often or infrequently or what the fact may be? A. I would say that I probably saw him two or three times a week. It has to be a guess. I don't know exactly.

Q. Mr. Brennan, would you turn, please, behind you and look at that floor plan of the bank.

Now, would you tell us where Mr. Miller's desk was please? There is a mark on here "Miller." Is that where Mr. Miller's desk was? A. I am inclined to think it was maybe here (indicating) rather than there (indicating).

Mr. Perry: May we mark that, your Honor?
The Court: Yes.

Q. Would you mark, Mr. Brennan, where Mr. Miller's desk was located?

The Court: Put a "B".

Q. Make a box and put the letter "B" where you think it was located. A. (Witness writes.)

Q. Mr. Brennan, will you also point out to us now where——

Mr. Perry: Well, I withdraw that.

(879) Q. Did you have a desk at the bank? A. Yes, sir.

Q. Will you point out to us where your desk was located? A. About here (indicating). "B"?

Q. Spell it out so it will be clear. Put "Brennan." Spell it out. A. (Witness writes.)

Q. I want to direct your attention back to the period that I have just mentioned, 1948 to March of 1950.

Will you tell us, please, whether or not there were any desks in between your desk and Mr. Miller's desk? A. Yes, I believe, to the best of my recollection, there was a secretary's desk immediately in front of my desk.

Q. Would you please note that for us so we can follow

your testimony? A. Just about there (writing). "Secretary"?

Q. Would you please put that down. A. (Witness writes.)

Q. Whose secretary was she? A. Mr. Miller's secretary.

Q. Will you tell us, please, about how far from (880) Mr. Miller's desk your desk is, if you can guess? Keep in mind this is the scale. That distance is approximately thirty feet. A. The distance I mark off here?

Q. No. That is the scale up there. That is approximately thirty feet. A. I would guess about fifteen to eighteen feet, probably.

Q. That your desk was located away from Mr. Miller's desk? A. Yes. In other words, fifteen to eighteen feet from here to here (indicating).

Q. When you are indicating, you are indicating fifteen to eighteen feet—you are pointing at Miller's desk and you are pointing at your own desk; is that correct? A. Yes.

Q. On the occasion, Mr. Brennan, that you saw Mr. Mishel in the bank, do you recall ever seeing him with any other persons? A. Oh, yes.

Q. Do you know the names of any of these other persons that you saw him with? (881) A. Sure. I have spoken to him myself on occasions.

Q. Who is that, please? A. Sir?

Q. Would you give us his name? A. I say I have spoken to Mishel on occasion when he was a depositor in the bank in that period of time. I would be one.

Q. My question is not clear. I am talking about people who may have been in——

Mr. Perry: Well, I withdraw that.

Q. Do you know whether or not during this time Mr. Mishel had other people in his employ? A. I remember only one party that I had the impression was in Mr. Mishel's employ. I had no knowledge positively that he was in his employ, but he was often in his company when he would come in the bank.

Q. Do you know that person's name? A. I believe it's Schnabel. He is a heavy set, dark haired person and he had a harelip, and for that reason it is easy for me to remember him.

Q. If I suggested his first name might be Norton, would that refresh you as to whether or not— A. Yes. Mortie, or Nortie, something like that.

(882) Q. Can you recall anyone else that was in the bank with Mr. Mishel who was one of Mr. Mishel's employees? A. No.

Q. If I asked you whether or not the name Samuel Siegel means anything to you in that line, would you please tell us? A. No, sir, it doesn't.

Q. Does that refresh your recollection as to whether you ever saw a man by the name of Sam Siegel? A. I just don't know a Sam Siegel.

Q. How often would you say you saw Mr. Schnabel in the bank, if you can tell us, please? A. Well, I would say a period of maybe three, four months when he might— there was a period of three or four months when he seemed to be in Mr. Mishel's company. That would not be to say that from the first time I ever saw Mishel. It was after I had known Mishel as a customer in the bank. Probably for about three or four months in 1949, I would guess.

Q. Is the name Irving Rosenberg at all familiar to you in any way either by name or as one of Mr. Mishel's employees? A. No.

Q. Mr. Brennan, I show you Government's Exhibit 9

(883) in evidence and ask you whether or not that face is familiar to you (handing to witness)? A. No.

Q. Do you have any recollection of ever having seen that individual before? A. No.

Q. Were you shown this picture by Mr. Hallinan? A. I was shown a picture by Mr. Hallinan. I am not sure now that that was the same picture.

I am not sure.

The Court: We will take a recess now until 10.30 tomorrow morning. Don't discuss the case.

(Adjourned to October 26, 1956, at 10.30 o'clock a. m.)

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(884)

New York, October 26, 1956;
10.30 o'clock a.m.

Trial resumed.

JOHN J. BRENNAN resumed.

Direct examination continued by Mr. Perry:

Q. Mr. Brennan, yesterday you were telling us about the platform in the bank. Would you perhaps clarify that for us? What do you mean when you say platform? A. Well, I guess I can show you best on this diagram the platform area of the bank.

Q. Would you show us, please? A. The platform that starts at the front of the bank here (indicating) and runs to this wall back here (indicating) and is divided off by a railing of three or four feet in height that runs from the back to the front of the bank, and then it is bounded on this side (indicating) by this wall here (indicating).

Q. Mr. Brennan, it isn't actually on the platform, is it? It is level with the— A. It is level with the floor.

Q. —the floor of the bank? (885) A. That is right.

Q. On this platform that you pointed out which would be on the left as you are looking at the bank from the front door, that is where the desk space is, isn't it? A. That is correct.

Q. Where the various officers and other personnel sit? A. Right.

Q. In order that we can keep that clearly in mind, Mr. Brennan, you have shown us where Mr. Miller's desk was, you have shown us where your desk was, I am going to ask you, without bothering to point it out were there desks behind Mr. Miller's desk? A. Yes.

Q. How many? A. Two.

Q. Mr. Vassil's and his secretary, is that correct? A. Yes, that is right.

Q. Now you pointed out where your desk was or is, I should say? A. Yes.

Q. Now were there desks after yours, and by that (886) I mean stretching up to the front of the bank? A. Yes.

Q. How many desks, approximately? A. Four, three or four.

Q. And at this platform space you had the officers of the bank seated as well as secretarial help, is that right? A. Yes, sir.

Q. Thank you. Mr. Brennan, would you tell us, please, what procedure was followed in the bank, say, from 1948, when you started, to March 1950 in opening accounts? A. Well— .

Q. And tell us what papers were used so that we can follow your testimony, please. A. First we used an opening sheet, which is an information sheet on the prospective customer. We obtained his name, his business, his home address, his phone number, his previous banking connections usually. We also record the date of the deposit, the date of opening the account, the amount of the deposit, and make a notation sometimes regarding the

references given by the individual or company opening an account, and——

(887) Q. Excuse me. That was called an opening account sheet? A. That is an opening sheet for an account.

Q. Please continue. A. They vary according to the account. We have a new account deposit ticket, which bears the name of the new account, the date and the amount deposited. We have three signature cards which the customer signs. In those days we used a deposit receipt book, a pass book. We made a notation in the pass book as to the amount of deposit, the date, and initialed it, verify that it was received.

Q. Is that generally the procedure? A. That is generally the procedure and the forms used.

Q. I direct your attention now to the opening account sheet and the signature card. What would be on the signature card, Mr. Brennan? A. Well, the customer's signature, and then at a later time one of the secretaries or clerk-typists would transcribe the information from the opening sheet, that information that is required for the card itself.

Q. Would that be, for example, address, telephone (888) number and items like that? A. The items listed on the opening sheet.

Q. And that would be taken from the opening sheet? A. That's right.

Q. Where were the papers, the opening sheet papers, and the signature cards kept in the bank? A. They were kept on the platform area in the desks of officers and platform assistants.

Q. Would that include secretarial staff? A. Some of the secretaries could have that type of material, that's right.

Q. Was customer or potential customer access to the signature cards and opening statements restricted in any way? A. Not restricted, I wouldn't say. If a potential

customer wanted to open an account or indicated that he wanted to open an account at a future date, we might give him the signature cards and possibly even the opening sheets, or opening sheet, rather, so that he could sign the card and fill in some preliminary information on the opening sheet, if he desired to.

Q. That would you say was the practice in the bank, to permit free and easy access to the signature cards (889) and opening sheet? A. Yes.

Mr. Hallinan: I will object to the form. I think it is leading. I think we are getting into an area where I will object, your Honor.

The Court: I will sustain the objection as to form.

Q. If an unknown person came into the bank and requested signature cards and perhaps opening sheets, as a normal procedure would that person be given the items? A. Yes.

Q. Will you tell us, please, if there was any practice with regard to giving known depositors opening sheets and signature cards if requested by known depositors? A. Yes, we would give them.

Q. On these opening sheets did you have any notation printed on the sheet of "Introduced by"? A. Yes, sir.

Q. Would you tell us, please, what that means? A. Well, that in effect actually means that the account is credited to some officer or director (890) of the bank who might have been responsible for soliciting the account or soliciting an account with whom the new opening account is acquainted, associated, affiliated.

Q. Let me see if I can crystallize that, Mr. Brennan. Assume that Mr. John Smith was a known depositor in the bank and assume that Mr. John Smith brought in accounts for X, Y and Z.

How would the "introduced by" section of the opening

sheet record that? A. Well, if we didn't know, we would look up and see who had been credited with Mr. John Smith's account and mark X, Y and Z accordingly, introduced by the party who had introduced or been credited with Mr. John Smith's account.

Q. And who actually examined the opening sheet with the point of view of giving credit for the account? A. The party who opened the account, the bank person who actually opened the account with the customer or received the new account papers.

Q. Was there such a notation also, "Introduced by," on the signature cards? A. Yes. That again was taken from the opening (891) sheet record.

Q. And who mechanically transcribed the information from the opening sheet to the signature card? A. A clerk-typist or a person who would be working as a secretary normally for me who included that function among her duties.

Q. Yesterday you were telling us about the redemption forms or redemption tickets, as you called them. Where were these redemption forms or redemption tickets located in the bank? A. Well, like the opening account forms, they were retained in officers' desks and an occasional secretary's desk, possibly, and I believe that they used to be also located in the counters that the public used, the writing counters that the public used. They have a pigeon-hole arrangement below the counters were deposit slips and bond purchase applications and various papers are kept for customer convenience, and I believe that there were also located in those pigeon-holes too.

Q. Would you call those the pigeon-holes that you usually find in banks? Those pigeon-hole compartments where all the various papers are kept (892) in the bank for customer convenience, is that what you have in mind? A. Yes, sir.

Q. How many of those did you have in the bank? Not

individual pigeonholes, but how many places? A. Two counters.

Q. Would you look on the floor plan, please, and see if you can tell us where such counters were located in the bank? A. Yes, right here, the last counter (indicating).

Q. Are you pointing to the section right up close to the front of the bank? A. To the right of the entrance doors as you come in here.

Q. Any other place, Mr. Brennan? A. Here (indicating), surrounding a column, a pier from the balcony ceiling to the floor there is a glass counter there.

(893) Q. Was that, would you say, toward the rear of the bank? A. Toward the rear of the bank floor, that is right.

Q. If a person requested redemption tickets or forms, would they be given? A. Yes, sir.

Q. I mean, assuming they were not in the pigeon-hole at any one time? A. That is right.

Q. Now, Mr. Brennan, about, say, a month or two ago did Mr. Hallinan request of you that the bank send to him the redemption forms that had been used in connection with redeeming of bonds at the Pennsylvania Exchange Bank over the years 1949 and 1950? A. Yes, sir.

Q. Were these forms in addition to those that Mr. Hallinan had previously obtained in connection with the Chernoff bonds and so forth? A. Yes, sir.

Q. These were additional forms? A. Yes, that is right.

Q. Will you tell us, please, about how many—I know you didn't count them; just give us an (894) appropriation—about how many did you send to Mr. Hallinan? A. I would say several hundred.

Mr. Hallinan: Do you want them? I just want to remove something from some of them so as not to——

May the record indicate I just removed paperclips from some of them.

Q. Mr. Brennan, I show you a stack of redemption forms——

Mr. Hallinan: I think we ought to have some means for identification.

The Court: I don't know what this is all about.

Mr. Perry: I want to ask him, Judge. I just want the record to note that I am showing him something.

Q. Mr. Brennan, will you examine the papers that——

Mr. Hallinan: I would like to have them have some kind of identification.

The Court: Let us see what Mr. Perry wants.

Mr. Perry: I am going to establish the foundation for them as being bank records kept in the (895) regular course of business, and then I am going to offer them in evidence.

Mr. Hallinan: But the usual procedure is to have them marked first so that we can follow it.

The Court: Come on up here and tell me what this is all going to get us in before I spend 15 minutes marking all that paper.

(The following proceedings were held at the bench out of the hearing of the jury.)

Mr. Perry: Your Honor, we would show from this witness that actually there was no set procedure at the bank for cashing bonds, that the testimony that we have received on unknown bond owners who were brought in by known depositors that they had to be approved by the officers and that they had to be initialed. We say that it wasn't the practice.

The Court: What are these documents supposed to be?

Mr. Hallinan: They pertain to both situations, where they were accounts at the bank and other situations as we have in this case.

Mr. Perry: There is no difference actually, virtually no different situation.

(896) The Court: I doubt that I am going to receive this bunch of papers as proof of that in the absence of more foundation than I believe that Mr. Brennan is able to give you. But you go ahead and lay your foundation and we will see.

Mr. Hallinan: I want the record to reflect that I have absolutely no objection to this offer of proof.

The Court: My only objection is, if we are going to have the case cluttered with hundreds of documents that I don't see—

Mr. Perry: Perhaps I won't offer them. I will mark them for identification and get whatever testimony I——

The Court: All right, mark them collectively.

Mr. Perry: Yes. one exhibit, your Honor.

(The following proceedings were held in the hearing of the jury.)

(Defendant's Exhibit C marked for indentification.)

By Mr. Perry:

Q. Mr. Brennan, before you sent these redemption forms to Mr. Hallinan did you examine them? A. Yes, I looked through them rather hurriedly, (897) yes.

Q. And did these redemption forms include cashings by the bank both of bonds for known depositors and also of bonds for strangers who were indentified by known depositors? A. Yes, sir. Those are—any bond transaction, any cashing of bonds were included in that.

Q. Mr. Brennan, tell us from your examination of these forms did you find that there was any consistent procedure followed in the bank with reference to cashing bonds? A. With regard to the forms I found that they

were rather inconsistent in the information that they contained rather than consistent.

Q. Speak up. A. Rather than consistent, I say.

Q. Will you tell us, please, what you found with regard to whether or not these forms were initialed by anybody? A. The only initial that I could find as I went through them was mine.

Q. How many had your initials? A. Well, I didn't count them, but I would estimate probably a dozen, maybe.

(898) Q. Would you say whether or not you followed any consistent procedure in approving the cashing of bonds? A. Well, I think I did; I thought that I always initialed any redemption forms where it became necessary for me to identify the bond casher; it is possible that I did and that I didn't and that I only had that many instances occur in that time. I don't know.

Q. What would you say with regard to the other officers in the bank? Did you observe any procedure that was consistently followed? A. Well, no. And I didn't find any initials on any other bond redemption forms.

Mr. Perry: We have no other questions.

The Court: All right. Any questions?

Mr. Hallinan: Yes, I think I have several questions, your Honor.

May we have this marked, please?

(Government's Exhibit 32 marked for indentification.)

Cross examination by Mr. Hallinan:

Q. I show you Government's Exhibit 32 for identification, Mr. Brennan, which was sent down (899) with that batch which you have just spoken about. I ask you if Mr. Miller's full name does not appear on that redemption form? A. Yes, it does.

Q. Would you tell us what other information is on that

redemption form? A. There is the name of Helen Mishel where it says "Write signature"; and the amount of the bond—the amount of money given in payment for the bond, the bonds; the date of the transaction, the name of the Pennsylvania Exchange Bank and the address, and the listing on the back of the serial numbers, maturity value, date of issuance, and amount paid on each bond.

Q. What does the name James M. Miller on that redemption form indicate to you? A. It is signed on the line marked "Identification," which indicates that he approved the cashing of this bond.

Mr. Hallinan: The Government will offer this in evidence.

Mr. Perry: No objection.

The Court: All right. Received.

(900) (Government's Exhibit 32 for identification received in evidence.)

Mr. Hallinan: May I circulate it, your Honor?

The Court: Yes.

(Mr. Hallinan hands Government's Exhibit 32 to the jury.)

The Court: I think you can go ahead while they look at it, Mr. Hallinan.

Q. Mr. Brennan,——

Mr. Hallinan: I am now going to refer to page 873 of the transcript from yesterday.

Mr. Rosenblum: Just one moment.

Q. Mr. Brennan, do you remember yesterday in response to a question about the procedure followed at the Pennsylvania Exchange Bank in the cashing of bonds—I am down towards the bottom of the page—you stated—"I don't remember actually specifically receiving any written instructions covering the cashing of bonds although I know

that there was—there were probably several operating circulars in effect from the Federal Reserve Bank as agent for the Treasury Department covering the cashing of bonds, in various instances how they should be handled, how (901) they should be inscribed, signed, et cetera." Do you recall that? A. Yes, sir, I do.

Q. Now do you recall being asked this question——

Mr. Rosenblum: The same page?

Mr. Hallinan: No. I am sorry. 876.

Q. "Q Would you tell us, please, what was the practice in the bank, if there were any, with relation to cashing bonds for strangers where the stranger is introduced by a known depositor of the bank?"

Do you recall being asked that question? A. Yes, sir.

Q. Do you recall giving this answer:

"There would be no specific instructions, I would say. If a customer were to introduce a person who was the payee on a bond and said that he wanted to identify him so that he could cash his bond, that usually is enough identification to my way of thinking and I believe to anybody who worked in the bank at the time. Firstly, we don't wish to embarrass our customers by asking for additional specific identification from the stranger or the person that he introduces, and I might make a notation on the (902) redemption form that our customer, say it might be John Smith, introduced John Brown, who cashed the bonds."

Do you recall that answer? A. Yes, sir.

Q. Were you familiar with any of these circular letters from the Treasury Department, Mr. Brennan? A. That's what I tried to indicate yesterday, that I wasn't thoroughly at all familiar with these circular letters, that I had been orally instructed on many of the operating practices of the bank when I first came to the bank in June

of 1948 and for a good period thereafter. I have had occasion, naturally, to check since then and have seen some of these operating circulars that I referred to.

Q. Were you familiar in any way with the circular letters either by someone telling you orally or by reading the circular letters during the time which you have been testifying about here? A. You mean from the period of 1949 and '50. No, only through verbal instruction.

Q. Did you know at that time that the very procedure you have described did not conform to the Treasury Department circulars? (903) A. No, I didn't know at that time, and I might say that in answering you yesterday I tried to tell you——

Q. You did not answer me. A. I mean Mr. Perry.—what might have been the practice in the bank.

Q. Might have. Do you recall what the practice was in fact, Mr. Brennan? A. What was the practice in the bank. I will put it that way.

Q. You recall what was the practice? A. Yes.

Q. Would it be fair to say that in many of these areas you testified in effect there was no practice? A. Maybe there is a confusion of terms. When I say "practice," what was the practice in the bank, I mean what might have actually happened from day to day in the various transactions wherein bonds were cashed.

Q. Let me ask you this: From your own knowledge, do you know that it was the practice of the rest of the officers that worked in the bank in the same period of time to not embarrass and therefore not inquire of the relationship between (904) the customer and the owner of the bonds? A. Well, I guess the best way I can answer that is I don't know what every officer might have done or thought on the subject, but it was my impression that you do not try to—I shouldn't say try—you do not embarrass a well known and probably respected customer of your bank who may bring in a friend of his unknown to

our bank and say that he is John Brown and he has known him and would we please cash his bond, we may not embarrass Mr. Brown by making him produce various items of identification. That is what I am trying to say.

Q. Did you know then and do you know now that in substance the Treasury Department in its circular advises it should be done discreetly but it should be done; do you know that? No, sir.

Mr. Perry: I object.

Mr. Hallinan: We are talking about the relationship between the customer and the owner of the bond.

Mr. Perry: I do not know that the circular letter says more now than Mr. Brennan said.

(905) The Court: Do you have the circular letter?

Mr. Hallinan: Yes.

The Court: Read the language, then. That is in evidence, isn't it?

Mr. Hallinan: Yes. I cannot seem to place it. May I have Mr. Malinky review it while I proceed to something else?

The Court: All right.

Q. You limited one of your answers just a minute ago, "I can tell you what I did," and you did not know what the other officers were doing.

Well, then, do you in fact know of any practice at the bank or are you telling us what you in fact did, the procedure that you followed?

Mr. Perry: I object to that, your Honor. I think Mr. Brennan testified at least in part after he examined these redemption forms of '49 and '50, which is the best record of what the practice was.

The Court: I am not sure of that. I will let the

witness answer. It does not call for a yes or no answer.

(To reporter) Read the question and let (906) the witness answer as best he can.

(Question read.)

A. I would say about that that I was under the impression since I had been instructed to identify bonds in certain cases and also provide an initial on the redemption form, that other officers and people who identified bondholders were doing the same thing. After I looked at these redemption forms, it doesn't stack up that way. It doesn't appear to be what might have actually happened at the time.

Q. You mean officers not identifying? A. Yes.

Q. Signing? A. Yes.

Q. Mr. Brennan, I ask you to look at these again and tell me how many of these pertain to accounts at the bank and how many pertain to situations where there was no account at the bank? A. If I am to answer this at all, I would have to do it from memory, the names I knew of bond cashiers who were customers at the bank.

Q. You have just testified that from examining those you not only found a lack of consistency but (907) inconsistency. I am only asking you to do that now a little more specifically. Would you do that, please? A. I gave my answer from the standpoint that as I went through them hurriedly the only initial that I saw was my own and therefore I couldn't have been the only person who ever approved cashing of bonds for outside customers. There must be some others amongst these and if they did not show initials, then apparently officers were not following the practice that I followed.

Q. When you talk about practice, could that possibly be accounted for, the absence of initials on most of those, by reason of the fact that they were accounts at the bank?

Can't you determine that by looking at those and seeing what is checked off— A. The majority——

Q. The majority what? A. Are customers.

Q. I have clips so it will be easy for you. Not this one, but all the other clips in here are ones that you initialed, so you can find them quickly. A. I see.

(908) Q. Let me do it. I show you out of Defendant's Exhibit C for identification a redemption form dated May 2, 1950, in the name of John O. Beau. Will you look at that redemption form; please? Yes.

Q. Can you tell me whether or not that was an account at the bank? A. To the best of my recollection, this would not have been an account at the bank.

Q. And that one you initialed? A. Yes, sir.

Q. I show you a redemption form dated December 1, 1950, in the name of Mrs. Muriel McGoldrick. I ask you if your initials appear on that? A. They do.

Q. To the best of your recollection, was that an account or not an account at the bank? A. Mrs. McGoldrick's husband had an account at the bank. Mrs. McGoldrick, to my recollection, did not.

Q. To your recollection, did Mrs. McGoldrick come in with the bonds alone? A. I don't believe so. I think she was in the company of her husband.

(909) Q. And in that circumstance you initialed the bond redemption form? A. That's right.

Q. I show you a bond redemption form, again dated December 1, 1950, in the same name, and I ask you if your initials appear on that? A. It does.

Q. That is Mrs. McGoldrick's again? A. That's right.

Q. I show you a bond redemption form dated 12-19-50 in the name of Florence McCue. Does your initial appear on that? A. Yes.

(910) Q. Was that an account at the bank or not an

account? A. That woman was, I think, a co-signer on a personal loan in the bank, and she was known to me. She was a cousin of Mr. Gallagher, who was vice-chairman of the Board of the bank, but she was not a depositor in the bank and was, therefore, not known to the tellers.

Q. But you initialed that? A. I initialed it, identifying her to the tellers.

Q. Let me follow that up. When the person came in and was not known to the tellers, the owner of the bonds with a customer of the bank assume they went directly to a teller, would the teller refer them to an officer at that point? A. In this case if Mrs. McHugh, she knew me and always came directly to me.

Q. I am not asking you about Mrs. McHugh. Did you hear my question? A. You say that you are not asking me about Mrs. McHugh. You mean any customer, any outsider——

Q. Coming in with a customer, they go directly to the teller. Would the teller refer them to an officer? A. No.

(911) Mr. Hallinan: I do not have any more questions, your Honor, but I would like a few exhibits marked.

May we have this marked 33, please, and then mark the others?

(Government's Exhibits 33 through 42, inclusive, for identification, marked.)

Q. Mr. Brennan, do the bond redemption forms today still come in the pad form that they came in in 1949 and 1950? A. Yes, sir, they do.

Q. I show you Government's Exhibit 33 for indentification. I ask you if this is what you have referred to as

one of the customers' tables in the bank? A. Yes, it is the one at the rear of the banking floor.

Q. Is that in substantially the same condition as it was in in 1949 and 1950? A. Substantially the same, yes.

Q. Is the practice with respect to redemption forms being available to customers the same today as it was in 1949 and 1950? A. I would say so.

Q. Would you point out in that picture where the redemption forms are in pad form, please? (912) A. I couldn't point that out to you.

Q. Would you try, Mr. Brennan? A. I wouldn't be sure if I did.

Q. Were you sure when you testified before——

Mr. Perry: I object, your Honor. The man cannot do it on the basis of a picture. It does not call for this remark.

Mr. Hallinan: He can try, your Honor.

Mr. Perry: He said he could not. I have no objection to him trying.

The Court: I will sustain the objection as to form.

Q. Will you look at the picture for a minute? A. Yes, sir.

Q. You have testified that bond redemption forms were kept in that customers' table in 1949 and 1950. Will you tell me where they were kept in there in 1949 and 1950? A. I couldn't tell you beyond the fact that if they were kept in there, and I said I believe they were kept in there, they would have been in one of these pigeon holes, possibly two.

Q. Were they in pad form? A. Yes, they always have been in pad form.

(913) Q. And you say the practice is the same today as it was then? A. Yes.

Q. Can you see any pads in that picture? A. Honestly, I wouldn't know if it was padded or not.

Mr. Hallinan: I will offer this in evidence and then I would like to circulate it.

Mr. Perry: I object to it.

The Court: Let me look at it.

(Exhibit handed to Court.)

The Court: Mr. Brennan, do you know what material there is kept customarily at this table?

The Witness: Yes, sir.

The Court: Can you tell us slot by slot what is in there?

The Witness: No, I can't. I can only tell you the type of materials that might be kept.

The Court: Not what might be kept. What Mr. Halinan is trying to determine is what you know was kept there, not what you speculate might be there.

Can you go down slot by slot and say what type of deposit slip or what type of withdrawal slip would be there in the various slots?

(914) The Witness: Your Honor, I can tell you the kinds that would be there, but not by slot.

The Court: What do you know would be there?

The Witness: There would be savings account deposit slips, regular checking account deposit slips, special checking account deposit slips, applications for purchase of savings bonds—let's see what else—advertising material on various services offered by the bank, and I would include these pads that Mr. Hallinan speaks of, the redemption forms.

The Court: They are there today?

The Witness: I believe so, sir.

The Court: And there would be approximately two cubby holes for each one, would you say, or

for the more frequently used ones there would be more than one cubby hole?

The Witness: That's right.

The Court: I think I will not take the offer at this time.

Q. I show you Government's Exhibit 34 for indentification and ask you if that is a photograph representing a view of the tellers' cages. A. Yes, sir

(915) Q. Is that substantially the same as the cages existed in 1949 and 1950? A. Yes, sir.

Q. And 1948. I show you Government's Exhibit 35 for identification and ask you what that represents. A. This is the area in which Mr. Miller's desk was located in that period of time.

Q. I show you Government's Exhibit 36 for identification and ask you what that represents. A. This is a view of the platform area of the bank from front to back.

Q. I show you Government's Exhibit 37 for identification and ask you what that is, what that represents. A. This is a view of the platform area from back to front.

Q. I show you Government's Exhibit 38 for identification and ask you what that represents. A. This is a picture of the banking floor of the bank from front to back.

Q. 39 for identification; I ask you what that represents. A. It is a picture of the banking floor of the bank looking toward the rear half of the platform area (916) and also including some view of the balcony or credit department section.

Q. And 40 for identification, what does that represent? A. This is a view from the floor of the bank looking toward the tellers' cages covering about two-thirds of the area of the tellers' cages here.

Q. And does 41 represent a closer view of the tellers' cages? A. Yes, sir, it does.

Q. 42, what does that represent? A. This is a view of the banking floor from the rear looking toward the front of the bank. It includes the first half—the first section of the platform and the brief section of the tellers' cages.

Q. I ask you with respect to all these exhibits, 34 through 42, do they reflect substantially the same condition that the bank was in in 1948, 1949, and 1950? A. Yes, sir.

Mr. Hallinan: The Government will offer Exhibits 34 through 42. I might add solely as visual aids I think they will aid considerably the jury in understanding the facts of this case, your Honor.

(917) Mr. Perry: Your Honor, we would have no objection, but there is one problem, and I think probably it can be resolved very simply. A great deal of this largely is immovable furniture, so we have no objection to that, the fence and so forth. But we notice chairs here, small chairs, like chairs we have right here. And I would think that these —perhaps I would ask the witness whether they had any fixed position or whether they might be moved. It is just for the chairs. I have in mind the chairs are not supposed to indicate where they actually were——

Mr. Hallinan: I can clarify that by a couple of questions. I might be able to clarify it.

By Mr. Hallinan:

Q. You indicated that 35 was a picture of approximately where Mr. Miller's desk was. You see the three chairs in front, on the outside of the railing? A. Yes.

Q. Do you recall that these chairs in that number were there during 1948, 1949 and 1950? A. I would say so, yes.

Q. In approximately that position? A. Yes.

Q. And 37, would you say the same about that with (918) respect to the chairs? A. These chairs (indicating)?

Q. Yes. On the inside of the railing on the platform as you have referred to it? A. Yes. Those chairs were normally in that position and still are.

Q. And what about 38? A. Yes.

Q. 39? A. Yes.

Q. And 42? A. Yes.

Mr. Perry: We have no objection.

The Court: All right.

Mr. Rosenblum: May we take a moment to show them to the defendant, please?

The Court: All right.

Mr. Rosenblum: Mr. Hallinan——

Mr. Hallinan: Yes, I am arranging them for you.

The Court: Mr. Hallinan, the other one that you had identified I think that can be included——

Mr. Rosenblum: That is out. That is not offered.

The Court: Wouldn't that be included in the (919) tender for the same purpose?

Mr. Hallinan: Yes.

The Court: What I did was reject it at the time you offered it for the suggested purpose that you offered it for.

Mr. Hallinan: All right. I will re-offer it.

The Court: As part of the entire group.

Mr. Hallinan: Yes.

Mr. Rosenblum: May I inquire, your Honor, as to when these pictures were taken?

The Court: Yes.

Mr. Hallinan: It is noted on the back of each one.

Mr. Rosenblum: 1956. 8-23-56.

Mr. Hallinan: Yes.

Mr. Rosenblum: Is this being offered as a true representation of the picture at the time of the occurrences in this case?

The Court: I think it is.

Mr. Hallinan: Yes. I have laid the proper foundation.

The Court: That is what I understood to be the purpose of the offer.

Mr. Rosenblum: I was going to direct the Court's (920) attention to 35 and the testimony of Miss Driscoll—she had a different name then—Skotchdopole, as to where she said her desk was, and I bring that to Mr. Hallinan's attention to see whether or not he can develop where the particular desks were at the time of the occurrences in this case.

Mr. Hallinan: For that particular purpose, the location of her desk, I am not offering it for that. The general import of my offer is that these have been testified to substantially reflect the condition of the bank in the different parts as it then existed. I just offer them as visual aids to the jury so that they can better see the testimony.

The Court: To the extent that the oral testimony as to the various transactions is in conflict with the pictures, you don't suggest that this in any way varies or contradicts the oral testimony.

Mr. Hallinan: No.

Mr. Rosenblum: I see. No objection.

(Government's Exhibits 33 through 42 for identification received in evidence.)

The Court: Are you going to show these to the jury, Mr. Hallinan?

Mr. Hallinan: Yes, I would like to.

(921) The Court: The only two that I can't figure out are 36 and 37. I am sure the witness told you

what they were. I think the other two are self-explanatory. But you had better tell the jury which way they face.

Q. Will you tell us what 36 is, again, please? A. It is a view of the platform area of the bank from the front looking toward the rear of the platform.

The Court: May I see it again?

Mr. Hallinan: Yes, sir (handing). I think it will help if they keep in mind, and it has been testified to, that the balcony is in the rear of the bank.

The Court: In other words, some of the officers sat with their back to the front door, is that right?

The Witness: Yes, sir.

The Court: All right. That is what I didn't understand.

Q. And 37 is a view of the platform looking out to the door of the front of the bank? A. That is right.

The Court: And some of the officers also face the front?

(922) The Witness: That is right.

The Court: Mr. Miller faced the front?

The Witness: He did.

The Court: All right. Give them to the foreman one at a time, and then as he passes them along they can see them.

Mr. Hallinan: May I just briefly describe them again? I won't go at length, but just briefly.

The Court: All right.

Mr. Hallinan: 33 is the customers' table. I think that would be an adequate description.

Mr. Rosenblum: The what?

The Court: Customers' table.

Mr. Rosenblum: Have you described the two

that the jurors have now? I am trying to visualize it in my mind.

Mr. Hallinan: I just described the one.

Mr. Rosenblum: What was that? I see there are two going along and I was just wondering whether you omitted one.

Mr. Hallinan: Exhibit 35 is approximately where Mr. Miller's desk was.

The Court: What is the one, the first one, Mr. Hallinan, that your No. 3 has?

(923) Mr. Hallinan: This is one view of the tellers' cages. The view looks to the front of the bank.

36 is a view of the platform looking to the rear of the bank (handing).

37 is a view of the platform looking to the front of the bank.

38 is a view of the rear of the bank showing both the balcony and the railing of the tellers on the right and the railing separating the platform from the main floor on the left.

39 is a picture showing the rear of the bank and a portion of, an outside view of, the platform.

40 is a picture of the rear of the bank showing the portion of the outside of the tellers' cages.

41 is a closer view of the tellers' cages from the inside.

Exhibit 42 is a view of the front of the bank, the entrance to the bank.

The Court: Now, how do the jury feel about a recess? You have had a very relaxed morning looking at things half the time instead of having somebody talking to you. The trouble is that I don't smoke, so that I am not doing justice to those of you who do.

John J. Brennan—for Defendant—By the Court

A Juror: Five minutes?
The Court: Surely. We will take a short recess.
(Recess.)
(924) (Jury in box.)
Mr. Hallinan: I just have a few more questions.
The Court: All right.

Q. Mr. Brennan, would you recapitulate for us briefly how the signature card is made out and and how the opening sheet is made out and in what order? A. Normally the order is to make the opening sheet up first. If a customer would have obtained the cards earlier and brought them in already signed, then the signature would have come first on the card, but normally you get the information from the prospective customer and record it on the opening sheet and then have the customer sign the signature card.

Mr. Hallinan: May I have these marked, please.

(Government's Exhibits 43 and 44 marked for identification.)

Q. Mr. Brennan, I show you Government's Exhibit 43 for identification and I ask you what it is (handing to witness)? A. This is an opening sheet for an account called "I. Mishel, Special," a regular checking individual account.

(925) Q. I show you Government's Exhibit 44 for identification and ask you what it is? A. That is one of the signature cards for that account.

Mr. Hallinan: The Government will offer these in evidence.

John J. Brennan—for Defendant—Cross

Mr. Perry: No objection.
The Court: Received.

(Government's Exhibits 43 and 44 for identification received in evidence.)

Mr. Hallinan: I am just going to ask a few questions on that, and I will be through.

Q. I show you again 43 in evidence. Whose initials appear at the top of that opening sheet? A. On the first box on the left Mr. Miller's, and then skip a box—it is blank—and Mr. George P. Vassil and then my own in the last box on the right.

Q. Do you know whose handwriting the first written matter is in, "I. Mishel, Special"? A. That is my handwriting.

Q. Do you know whose handwriting the handwritten notation "Liquors" opposite "Business" is in? A. That's mine.

Q. And whose handwriting is the business address (925a) in? A. Mine.

Q. And did you make the ditto marks under that for home address, same as business address? A. Yes.

Q. And did you also write in "Other affiliation and bank accounts"—not that matter but opposite that printed matter, "P.E.B. Other Accounts"? A. Yes.

Q. The initials "J.W.M.," who put those on the sheet? A. I did.

Q. What does "J.W.M." stand for? A. James W. Miller.

Q. And that is opposite the printed notation "Introduced by"? A. Yes, sir.

Q. Where did you get that information? A. I knew that Mr. Miller had been given credit for the original Irving Mishel account, and therefore recorded that on there.

Mr. Rosenblum: I cannot hear the witness.

The Court: Read the answer.

The Witness: I said I knew that Mr. Miller (926) had introduced the original Irving Mishel account and therefore had credited Mr. Miller with this Mishel account.

Q. And who wrote the initials "JJB"? A. I did.

Q. And "Account Opened," the numbers on there, did you put those on there also, "1/16/50"? A. Yes.

Q. And opposite "Amount" $7500? A. Yes, sir.

Q. I show you Government's Exhibit 44 in evidence, which is the signature card, I. Mishel, Special. Do you know whose signature that is, who wrote that "I. Mishel"? A. I believe that Mr. Mishel wrote it.

Q. Do you recognize that as his handwriting? A. Right now I don't remember his handwriting that well to say, but I must assume that that is his handwriting, yes.

Q. You must assume. Do you recognize it as his handwriting? A. I say that I don't remember Mishel's signature right now.

Q. Who normally would put the typewriting on (927) this signature card? A. The typist-clerk or secretary whose duty it was to complete the records of the account.

Q. It would be, then, done from this opening account sheet, in this case Government's Exhibit 43? A. Yes, it would be copied.

Q. Do you recognize the only other handwriting on this opposite "Phone" "Br-9-3343"? A. No, I don't, but the customer could have entered it there.

Q. After these two documents, the opening sheet and the signature card, are completed, is this opening account sheet circulated to the officers whose initials appear above and which you have identified? A. Yes, sir.

Q. Is that after both documents have been completely

filled out? A. Yes, sir. It is usually the next day or the day after that.

Mr. Hallinan: May I circulate these?
The Court: All right.
Mr. Hallinan: That is all I have of this witness.

(Government's Exhibits 43 and 44 handed to jury.)

(928) The Court: Any other questions?
Mr. Perry: Yes, your Honor.

Re-direct examination by Mr. Perry:

Q. Mr. Brennan, I direct your attention to the redemption forms that comprise Defendant's Exhibit C for identification and ask you whether or not these are records kept by the Pennsylvania Exchange Bank and whether or not in the operation of the business of the Pennsylvania Exchange Bank it was the business of the bank to keep such records? A. Yes, sir, they are.

Mr. Perry: I offer these in evidence at this point.
Mr. Hallinan: I have no objection, your Honor.
The Court: All right, received.
Mr. Perry: May we keep them with the general marking "C," your Honor?
The Court: All right.

(Defendant's Exhibit C for identification received in evidence.)

Q. Mr. Brennan, was there a time within the last week or so that we sent to you photostatic copies of the forms comprising Defendant's Exhibit C? (929) A. Yes, sir.

Q. Did we ask you at that time to check these forms against the bank records and ascertain for us as best you could which of the names on the various redemption forms dealt with the cashing of bonds for non-customers? A. Yes, sir.

Mr. Perry: May I have this marked for identification.

(Defendant's Exhibit D marked for identification.)

Q. Mr. Brennan, I direct your attention to the photostatic copies of redemption forms that make up Defendant's Exhibit D for identification and ask you have you ever seen those before? A. Yes, sir, I have.

Q. Will you examine the back of them and tell me whether or not any notations appear thereon? A. The back of each one?

Q. Yes, please. A. (After examining) Yes.

Q. Do you find any letters on there? A. Yes.

Q. Were they put on there by either yourself (930) or some persons at the bank? A. I didn't put them on, but they probably were put on by a person at the bank because there were several of us who culled these things out.

Q. These forms that comprise that particular exhibit for identification, were they singled out from the rest of the forms and returned to us especially? A. Yes, sir, that's right.

Q. Would you mind telling me, please, what you found about those forms that comprise Defendant's Exhibit D for identification? A. Well, we found that these were not customers of our bank.

Q. Excuse me. When you say "these were not customers of our bank," would you please tell us what you are referring to? A. The names inscribed on each redemption form, the various names on the respective forms,

these, to the best of our knowledge, were not customers of the bank. These names are the names of the persons who cashed bonds at some time in that period.

Q. But you say they were not customers of the bank? A. That's right.

(931) Q. So far as your records reflect? A. That's right, yes, sir.

Mr. Perry: Your Honor, rather than take the time to individually single out at this point the original forms, redemption forms, that correspond to these photostatic forms, may I offer the photostatic copies in evidence now with the understanding as soon as we have a break, without taking the time of the Court, we will substitute the originals for them?

Do you have any objection, Mr. Hallinan?

Mr. Hallinan: I do not have an objection. I do not get the purpose of these singled-out documents, but I am not going to press any objection.

The Court: All right. I did not clearly get from the witness what these are. Exhibit D is a group of redemption forms for payments to persons other than customers; is that correct?

Mr. Perry: Yes, Judge, and. your Honor, what we propose to do is by permitting the jury to examine them later when they are in evidence, to determine what method or procedure of identification was followed as would appear from what appears on the face of the redemption form. That is our purpose.

(932) Mr. Hallinan: Then I would object to that unless we get the people in here who handled this transaction. This man has said that he has no personal knowledge of these particular——

John J. Brennan—for Defendant—Re-direct

Mr. Perry: May I say we are dealing with official records of the bank, your Honor?

Mr. Hallinan: There is no magic in that term, your Honor. They must be relevant and material.

The Court: I will sustain the objection at this time. You do not want to circulate them now anyhow?

Mr. Perry: No.

The Court: I will hear you at the beginning of the afternoon session before we get the jury back.

By Mr. Perry:

Q. Mr. Brennan, you are acquainted, are you not, with the use of these bond registers at the bank? A. Yes.

Q. I am referring now to Government's Exhibits 13 to 18, inclusive. A. Yes, I am familiar with the bond register.

Q. Would it be a fair summary to say that these reflect the bonds that have been sold at the times indicated with the numbers of the bonds and the amounts (933) involved? A. It reflects those that have been cashed.

Q. I am sorry. Yes, you are right, cashed. A. Yes, during the period covered there.

Q. And the last column here says the "Name and Address of Person Redeemed For" and is it the fact that under that heading is included the name of the person in whose name the bond is made out? A. Yes, sir.

Mr. Perry: Would you mark this E for identification.

(Defendant's Exhibit E marked for identification.)

Q. Mr. Brennan, I direct your attention to Defendant's Exhibit E for identification and ask you whether or not that is not one of the redemption forms that you have

identified as being a bank record? A. Yes, it is a bank record. You mean of the photostats that I just saw?

Q. Yes. A. Yes.

Q. Will you tell us, please, what appears on the face of that redemption form? A. The date of December 22, 1949, and where it (934) says "Received from" it says "Penn." The amount received is entered as $183.12. Where it says "Please make payment by," the box is X'd in where it says "Cash." Two $25 bonds. Where it says "Print name," the name of Edward F. Pyle is printed, and Edward F. Pyle's signature is written below that and an address of 531 West 49th Street.

Q. In other words, from the face of the form, in whose name would you say the bonds were registered? A. Edward F. Pyle.

Q. I now direct your attention to Government's Exhibit 13 in evidence, which is the register of bonds, and tell me what you find, please, as evidencing the ownership of the bonds, of the particular bonds represented on the Edward Pyle redemption form, as appears on the register?

Mr. Hallinan: I will object to this question on these grounds, your Honor: There has been no testimony on this particular subject from this witness. The only testimony in this record thus far is that the notations on the bond register are made from the bonds themselves. I know what he is trying to show and I think it is incompetent on the record as it now stands.

The Court: Will you read the question back?

(Question read.)

(935) The Court: I think I will sustain the objection.

Mr. Perry: As to form?

The Court: No, as to substance. In other words I don't see the corelation between the redemption

form and the register that you assume underlies your question.

Mr. Perry: Well, I think the testimony of Virginia Graef and the other tellers as to the procedure they said was followed is in issue here.

Mr. Hallinan: But they testified, Virginia Graef, testified, and she made that very explicit both on direct and cross, the notations were made from the bond. If they want to bring the bonds to show something I won't object. But this is incompetent by its very nature on the record as it stands.

Mr. Perry: That is true. There are a lot of generalities. We show on the question of what procedure was followed as Mr. Brennan indicated——

The Court: He doesn't know what procedure was followed. He is drawing inferences.

Mr. Perry: He is the manager of the bank. He indicated that there was relatively little if any set procedure followed. Mr. Hallinan went into specific (936) instances of showing what was done in those instances. We would like to show your Honor from specific instances that there was no set procedure followed, just as——

Mr. Hallinan: They have to show that by contradiction, and as far as they have gone there is no contradiction. It is incompetent in its very nature. If they want to bring bonds in and show the notation, to show the notation is not the same, I won't object. But they can't do it with incompetent material.

Mr. Perry: We show that the names that appear in the instances I called to Mr. Brennan's attention, the several instances I will call if your Honor will permit, would show that the names on the redemption forms are not the names that appear in the bond register. It certainly indicates a lack of any—

Mr. Hallinan: I suppose my objection is really moot now, but I am going to press it anyway.

The Court: I don't think it is moot. I will sustain the objection. In other words, I won't take proof of an isolated instance where something didn't happen as proof that there wasn't any practice. In other words, a single situation would be enough.

Mr. Perry: I wonder, Judge——

The Court: There is a limit as to how far I am going to travel on this subject. I will sustain the (937) objection.

Mr. Perry (to the Clerk): Will you mark this E-1 or will that upset your marking?

Mr. Hallinan: I am a little fearful, your Honor, that this record is going to get confused. I would suggest that we——

The Court: If you had objected to this bundle when it went in, it wouldn't be so confused.

Mr. Hallinan: Perhaps it is my fault, but I would suggest, if it can be remedied at all, that we remedy it now by separating the particular exhibit he wants marked for the record and have another exhibit number and mark it for identification.

The Court: We will be able to get along. Mark this one.

(Defendant's Exhibit F marked for identification.)

Mr. Hallinan: I may be stuck with this ultimately.

The Court: Don't worry about it yet. I am stuck with it now. Go ahead. I am not going any further with this, Mr. Perry. I think that we are——

Mr. Perry: My thought would be to mark them and then your Honor rule.

The Court: Let us cross the bridge on whether (938) I am going to let them in and then——

Mr. Perry: I don't understand what procedure you want me to follow, your Honor.

The Court: I will stop this line of proof right now. I will hear you when we resume at 2 o'clock as to whether I should go any further. I don't want to ask the jury to leave now and hear you now.

Mr. Perry: I am a little at a loss, your Honor.

The Court: Are we without any further questions?

Mr. Perry: We end with that at this time.

The Court: All right. Get the next witness.

(To the witness) You be on tap and come back here this afternoon if Mr. Perry wants you.

Mr. Perry: After lunch, please.

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(939) KENNETH G. WILMOT, called as a witness on behalf of the defendant, being first duly sworn, testified as follows:

Direct examination by Mr. Rosenblum:

Q. What is your business or occupation, Mr. Wilmot? A. I am in the banking profession.

Q. And can you tell us about when you first entered that profession? A. About 1918.

Q. And will you tell us, please, the names of the banks you were associated with from that time on? A. I was associated with the American Bank and Trust Company of New Haven, Connecticut.

Q. From when to when? A. From 1918 to 1922. Or—yes. To 22.

Q. And then? A. Then I came to New York and became associated with the Irving Trust Company.

Q. In what capacity? A. As a teller.

Q. That is, in 1922? A. In 1922.

Q. And for how long a time did you stay with— A. I was with them for five years.

(940) Q. How long were you employed by the Irving Trust Company? A. Five years.

Q. That would bring it up to approximately 27? A. Yes, sir.

Q. Then where did you go from there? A. I left the business and for two years I studied voice training, until 1929.

Q. Then after you finished studying voice training, what did you then do? A. I became associated with the Chase National Bank.

Q. In what year would that be? A. 1929.

Q. In what capacity? A. As a teller.

Q. And for how long a time did you stay as a teller with the Chase Bank? A. I was with them until the beginning of 1946.

Q. And then where did you go? A. I became associated with the Pennsylvania Exchange Bank.

Q. Will you tell us, please, in what office you entered? (941) A. I entered in the office which was primarily at that time at 26th Street and Eighth Avenue, which has subsequently moved to 38th Street and Eighth Avenue.

Q. In what capacity did you enter as an employee of the Pennsylvania Exchange Bank? A. As a teller.

Q. How long a time did you stay at the particular branch you just indicated? A. I was——

Q. I think you said it was the 26th Street branch. A. At that time it was 26th Street and Eighth Avenue.

Q. At that time? A. At that time.

Q. How long did you stay and what did you do? A. I was with them at that office until August of that year.

Q. August, 1946? A. Yes, sir.

Q. What did you do then? A. Then a branch office was opened at 20 West 48th Street, and I was sent there as a teller.

Q. Are you still at that bank? A. Yes, sir.

(942) Q. Did the time come when you became the head teller? A. Yes, sir.

Q. Can you tell us about when you became head teller? A. Sometime in 1947.

Q. Will you tell us, please, whether or not you are acquainted with the practice of cashing Government bonds at the bank you just referred to? A. I am.

Q. Did you as a teller, did you have prior experience in the other bank that you referred to? A. Yes, sir.

Q. Can you tell us whether or not the cashing of Government bonds is the duty of a teller? A. It is.

Q. Tell us, please, what the duties of a teller are in an instance where a non-customer unknown person to the bank comes in to cash a bond; what is the duty of the teller? A. It is to require positive identification from that person that he is the actual owner of the bonds in in question.

Q. So that even if he is not a customer and is not (943) known, if he does produce identification satisfactory to the teller it is his duty to cash the bond? A. Yes, sir.

Q. Is that right? A. Right.

Q. Will you tell us whether or not the teller must be satisfied from what is shown to him that he ought to cash the bond for that person?

Mr. Hallinan: I object to the form of this and the whole interrogation on the grounds of relevancy, your Honor. It is not the situation we are confronted with here at all.

Mr. Rosenblum: It is leading up to——

Mr. Hallinan: I don't care what it is leading up to. It is irrelevant on its face.

The Court: Yes. I will sustain the objection.

Mr. Rosenblum: Exception.

Q. Now, let us take a case where a non-customer unknown to the bank comes into the bank to cash a bond and is identified to a teller by a customer of the bank. Will you tell us what the duties of a teller are under those circumstances? A. The teller is obliged to cash the bonds.

Q. Is that his primary duty if he is satisfied (944) under the circumstances that the identification of a customer is sufficient to satisfy him?

Mr. Hallinan: I will object to the leading, your Honor.

The Court: Sustained.

Q. Would you tell us, please, whether or not in the instance I gave where a non-customer unknown is identified by a customer known to the teller, and I think you said the teller had a duty to cash the bond——

Mr. Hallinan: I object to the form of the question, your Honor, and it is leading. It is very simple to put a direct question on this.

The Court: Sustained.

Q. Will you tell us whether under those circumstances the Pennsylvania Exchange Bank——

The Court: Which circumstances?

Q. (Continuing) —it was the duty, the ones that you testified to about before when you said it was the duty of the teller to cash the bonds.

Mr. Hallinan: No. That is three times. I renew my objection again, your Honor.

Mr. Rosenblum: I submit to your Honor this witness did testify under what circumstances the teller had a duty to cash the bond.

(945) Mr. Hallinan: Then we have the testimony.

Mr. Roseblum: It is leading to something else. I am using that as part of the question.

Mr. Hallinan: I object and press my objection.

The Court: If you want to have the question and answer read back to incorporate it, I will——

Mr. Roseblum: Please. May we have it read back?

The Court: Can you find the last answer that I allowed?

(The last two allowed questions and answers read.)

The Court: What is your next question?

Q. Now, under the last circumstance, when he is identified by a customer, it was just read to you, was it the duty of the teller to refer the transaction to an officer? A. No.

Q. Can you tell us whether or not you are acquainted with the redemption forms? A. Yes, sir.

Q. Can you tell us whether going back to the period of December, 1949, and January and February, 1950, whether or not the redemption forms in blank form were (946) available on the customers' table? A. They were.

Mr. Rosenblum: May we have the letter, please, of July, 1950?

Mr. Hallinan: The first one from the Treasury Department; right?

Mr. Rosenblum: Yes.

(Mr. Hallinan hands Mr. Rosenblum.)

Mr. Rosenblum: Will you give me the enclosures, please?

Mr. Hallinan: Oh, the schedule (handing).

Q. Mr. Wilmot, I show you Government's Exhibit No. 20 in evidence, a letter from the Treasury Department to

J. W. Miller, President Pennsylvania Exchange Bank, dated July 19, 1950, and ask you to look at that and acquaint yourself with it. A. (after examining) Yes, sir.

Q. I show you Government's Exhibit 20-A in evidence, and also 20-B in evidence and ask you to look at those and acquaint yourself with them. A. (After examining) Yes, sir.

Q. I ask you, first, after directing your attention to the letter dated July 19, 1950, and ask you whether or not sometime thereafter Mr. Miller made the letter and (947) these two schedules available to you? A. He did.

Q. I direct your attention to the letter which is 20 and the part referring to bonds "of which photographs of bonds, one or more, for each day of payment are enclosed to assist you in Item 2 above", and ask you whether or not those bonds which were at that time enclosed were also made available to you. That is the photostats. A. The photostats, yes.

Q. What is your answer, sir? A. Yes, sir.

Q. Now, will you tell us whether or not you then made an investigation—I withdraw that.

Please tell us what Mr. Miller told you he wanted you to do regarding the data which you just testified about. A. He requested that I check with the tellers and ascertain if any of them were familiar with that transaction.

Q. Was that the Chernoff transaction? A. Yes, sir.

Q. Will you tell us, please, what you did? A. I questioned the tellers that were employed by the bank at that time as to whether they had a recollection (948) or not of the transaction. And they said they did not recall.

Q. Now, did you find that some of the tellers who were employed at the time of the Chernoff transaction were not in the employ of the bank at the time of your investigation? A. Yes, sir. They were not.

Q. Did you follow them up by going to their homes or some place? A. No, sir.

Q. Now, did you, after you made the investigation you told us about, report your findings that you referred to to Mr. Miller? A. I did.

Mr. Rosenblum: I have no further questions.
Mr. Hallinan: I have.

(949) Cross-examination by Mr. Hallinan:

Q. Mr. Wilmot, when did you get the instructions from Mr. Miller to check with the tellers? A. After he received that letter from the Treasury Department.

Q. Search your memory and tell me how long after. You looked at the letter? What is the date of the letter? A. I cannot tell you offhand.

Q. Do you know what year it was? A. I don't recall.

Q. Was it 1952, perhaps? A. May I see the exhibit?

Q. Perhaps, in a minute. Was it in 1952, Mr. Wilmot? A. I do not recall.

Q. Was it 1953, Mr. Wilmot? A. I do not believe so.

Q. It was before that? A. I believe so.

Q. Was it 1948? A. I do not recall.

Q. Was it 1949? A. I do not recall.

(950) Q. You may look at the letter (handing). Does that refresh your recollection? A. According to the date on the letter, yes.

Q. But independent of the letter it doesn't refresh your recollection, is that right? You say that is the date because that is the date on the letter, not because you have, after looking at that, an independent recollection of that transaction that you have just testified about; is that correct? A. I would have to search my memory further to know just what the date was.

Q. Well, you take all the time you want and you do exactly that.

Are you searching your memory? A. Yes, sir.

Kenneth G. Wilmot—for Defendant—Cross

Q. When after the writing of that letter did Mr. Miller tell you to make an investigation of this case? A. It was probably within a week or two.

Q. Sometime in July, then, of 1950; is that correct? A. Yes, sir.

Q. All right. Tell me the first thing that you did in that investigation. (951) A. I questioned the tellers.

Q. All right, let us just stop there for a moment. What teller did you question? A. There was only one teller employed at the time.

Q. Precisely. You didn't question tellers, did you, Mr. Wilmot? A. I questioned tellers, yes.

Q. You did. Who did you question? A. The people that were employed at the bank at the time.

Q. Who were they, Mr. Wilmot? A. I do not recall their names at present. I know I questioned one teller specifically.

Q. In what order did you examine or interrogate the three men tellers? A. I believe Mr. Lucey was the only teller at the time of this occasion.

Q. What do you mean when you say you examined the tellers? Who else did you examine? A. There were other tellers employed subsequent to the time of the leaving of the other tellers.

Q. So you examined, then, in connection with bonds that they had cashed, people that were employed subsequent (952) to them? Is that what you are saying? A. I asked them if they might have had any information as to what had happened previously.

Q. Would you expand on that just a little, Mr. Wilmot? What do you mean by that? A. They might have received some information from other people.

Q. What other people? A. People that had left.

Q. What people that had left? A. The two tellers.

Q. What were their names? A. Frank Horan and Virginia Graef.

Q Who did you examine in connection with the knowledge they might have that Horan and Graef had? A. I do not recall the people at present.

Q. Are they people still at the bank? A. No, sir.

Q. Getting back to the investigation, what is the first step you took in the investigation after Mr. Miller asked you to make it? A. I asked the teller who was employed at the time——

Q. Mr. Lucey? A. Mr. Lucey.

(953) Q. What did you ask him? A. If he had any recollection of the transaction.

Q. How did you know that he was involved in the transaction? A. He was a teller at the time and it might have been possible that he handled the bonds.

Q. You tell us exactly what you said to him as best you can recall it and what he said to you. A. I asked him if he had any recollection of cashing any bonds with the name of Chernoff, and he said he did not know, have any recollection of them.

Q. And when was that, Mr. Wilmot? A. I cannot tell you the exact date. It was when Mr. Miller gave me the letter to investigate it.

Q. You knew at that time, did you not, that the bank had photostatic copies of these bonds, Mr. Wilmot? A. They were shown me.

Q. Did you have them in making your investigation? A. No, sir.

Q. Didn't you know that Lucey had something to do with cashing those bonds? Wasn't Lucey's name on the bond itself? A. I don't recall.

(954) Q. Let us see if we can refresh your recollection.

(Pause.)

Mr. Hallinan: Your Honor, is it close enough to 1 so we can suspend? Evidently I left——

Colloquy of Counsel

The Court: We will resume at 10 minutes after 2.

Mr. Hallinan: May I request the Court to instruct this witness not to communicate with anyone about this case during the luncheon recess?

The Court: I will so instruct the jury, of course, not to talk about the case; and Mr. Wilmot, don't you talk to anybody about the case during the noon recess, either.

(Adjourned to 2.10 p. m.)

AFTERNOON SESSION

(955) (The following proceedings were held in open court in the absence of the jury.)

The Court: Mr. Perry, do you want to tell me what you are going to establish with this basket of papers you have?

Mr. Perry: Your Honor, as you know, the Government witnesses testified that they couldn't—you know, the tellers Horan, Graef and Lucey, that they understood the practice in the case of strangers, even though they were introduced by known depositors, that they were supposed to send them over to an officer to be checked. That is one thing. On the other hand, we have produced testimony that there wasn't any such practice; while it may have been done in cases, there wasn't any such practice. And this last witness indicated at least he would have been justified in cashing them himself. Also, cross-examination of Mr. Brennan he indicated that, you know, either way it would be worked, and Mr.

Hallinan called specific instances to his attention about initials on forms to try to elicit from him, or at least to leave the impression, as I gather, that he himself knew that (956) whenever he was cashing bonds for someone who was unknown, that there were supposed to be initials on the forms, things of that nature. At least I think that picture is——

The Court: I don't know what Mr. Hallinan was trying at the time, but Mr. Brennan himself said that it was his personal system to do it, so I don't know that Mr. Hallinan can generalize beyond that just from his cross-examination. I don't see how we can take a group of records and start to speculate as to a practice on the basis of it. Mr. Brennan himself knew relatively little about this part of the business at that time. I will take his testimony, though, for whatever it is worth. But I don't want to start speculating that because a group of records have initials or don't have initials that there was a practice, because we don't know the circumstances as to each of those redemption forms. And unless you know the circumstances under which each was taken I don't think you can start generalizing very much as to what the practice was. I think that I would be disinclined to go into that because of that.

(957) Mr. Perry: For the record, may I make my position a little clearer, Judge? It will take a couple of minutes.

The Court: Go ahead.

Mr. Perry: Defendant's Exhibit D is a batch of forms. I have not counted them, your Honor. I have been working on it now. I would say maybe 30, around that, 35, maybe more, a few more, a few

less. I can count it if it becomes important. But those redemption forms were used in connection with the cashing of bonds for non-customers.

Now, it would seem to me, Judge—I may be off on the testimony—it seems to me on the basis of the testimony produced on the Government's case it would be useful for us to show that in those instances—25, 30, 35—that these were of non-customers and they were cashed—by whom we don't know. At the moment at least we don't know—but nevertheless they were cashed at least without anyone initialing them, and it would seem to me that there would be no system, no fixed system, in the bank that they are to be initialed.

The Court: I think the trouble is that the re so many—until you know all the circums es (958) around each one, I would hesitate to draw or let the jury draw any inference from them, and I think that their usefulness is virtually nil and I think the whole bunch ought to be stricken from the record. I just do not see any purpose which they serve.

Mr. Perry: Mr. Hallinan did actually explore into them. I did not. I kept them general. He went into specific instances.

The Court: He went into Mr. Mishel's own account.

Mr. Perry: No.

Mr. Hallinan: I went into some that Mr. Brennan had initialed.

Mr. Perry: I did not go into specific instances. He did. It is an attempt to answer the impression, the inference——

Mr. Hallinan: It is an attempt to point out that what Mr. Brennan said was specifically the fact. He is mainly testifying about what he did.

The Court: He said that he himself initialed it as a rule. That was his own personal system, and apparently he concludes from this batch of documents that others did not; but I say unless (959) we know the circumstances under which the others acted, I do not think we can speculate as to what their practice was.

Mr. Hallinan: That is right, and I should like to further state I limited my examinations to ones he personally had knowledge of with his initials on them. It might well be from this batch of exhibits that a practice was ignored, if we knew the circumstances. I think we have testimony on both sides now as to the practice, and I don't think—well, I am not going to elaborate on your Honor's reasons. They are precisely the Government's.

Mr. Perry: If your Honor chooses not to have us receive them in evidence, I am going now to mark them and perhaps I will make an offer anyway. I spent an hour on them.

The Court: You go ahead and make your offer. I would much rather you put your time on some other phase of the case, but I have no control over that. You go ahead, Mr. Perry, and make your offer of proof if you think it should be further elaborated, but we won't take any more time now with the exhibit.

All right, let us get the jury.

Mr. Perry: We respectfully except.

(960) The Court: All right.

(Jury enters courtroom.)

KENNETH G. WILMOT resumed.

The Court: Mr. Hallinan, if you have found those papers you were looking for, we will go ahead.

Mr. Hallinan: Yes, I have.

Cross examination continued by Mr. Hallinan:

Q. Mr. Wilmot, how long have you known Mr. Miller? A. Since I started working for the bank.

Q. And what was that date once again—1926, was it? A. No, sir; 1946.

Q. I am sorry. 1946.

Were you very friendly with him while you were working at the bank? A. In a social way, you mean, or as an employee to employer?

Q. Let us take employee to employee. A. I would say not any more than any of the other employees.

Q. Were you friendly with him in a social way? A. No, sir.

Q. Do you like the opera, Mr. Wilmot? (961) A. Yes.

Q. Did you receive tickets for the opera from time to time from Mr. Miller while you were at the bank? A. Yes, sir.

Q. How frequently would that be? A. Once, possibly twice, in a season.

Q. Over how long a period of time, years? A. Over a period of five years, possibly.

Q. You know, don't you, that Mr. Miller did not give tickets to the opera to anyone else at the bank? A. I don't know that.

Q. I would like to take you back again briefly to the conversation with Mr. Miller sometime in July of 1950.

Would you tell us again briefly what Mr. Miller said to you when he asked you to make this investigation? A. That was all.

Q. Would you just repeat it again briefly, please. A.

He asked me to question the tellers or people involved as to if they had any recollection of the transaction.

(962) Q. Did he tell you what the investigation was for? A. No more than what I got from the letter itself.

Q. You said before at that time that he made available to you Government's Exhibits 20 and 20-A and 20-B, the schedules attached to 20; is that correct? A. Yes, sir.

Q. Did he make any other document available to you at that time? A. No, sir.

Q. From any other source in the bank before you started your investigation, did you get any other documents? A. No, sir.

Q. I think before the luncheon recess you told me that you could not recall whether you had seen the bonds or not; is that correct? A. That is right.

Q. Do you now have a recollection that you did not see the bonds? A. Before lunch I was under the impression that you were referring to these exhibits and not the bonds or photostatic copies of them.

(963) Q. Was there a practice at the bank for tellers who cashed bonds to put either their initials or their names on the bonds? A. Yes, sir.

Q. And when Mr. Miller asked you to make this investigation, you were aware of fact, weren't you? A. Yes, sir.

Q. And Mr. Miller wanted you to investigate who cashed these bonds and the circumstances; is that correct? A. If anybody was familiar or knew of the transaction.

Q. Would you look at Government's Exhibit 20. Does it refer to photostatic copies of bonds in there? A. (After examining) Yes, it does.

(964) Q. Did you ask Mr. Miller, when he asked you to make an investigation, if you could have the photostatic copies of these bonds? A. No, sir.

Q. You knew, didn't you, at that time, that the bonds, as I asked you before, would have the name of the teller on it? A. Yes, sir.

Q. Did you ask anyone else to make the bonds available? A. No, sir.

Q. Photostatic copies. Why not? A. I didn't think it was necessary at the time.

Q. Would it help you to locate and narrow down, right from the start, the tellers you would have to interview? A. Yes.

Q. What was the procedure that you had in mind when you started your investigation? How were you going to go about your investigation? A. As I started before, just ask the teller or tellers that might be there if they were familiar with the transaction at that time.

Q. That would take a lot more time, wouldn't it, (965) than going to the bonds and find out who the tellers were originally? A. Possibly.

Q. You are familiar, are you not, with—you have already mentioned them in another respect—with the bond redemption form that accompanies the bond when it is cashed? A. Yes.

Q. Are you familiar with the fact that the teller enters in the upper left-hand corner the amount paid out on the bond? A. Yes, sir.

Q. Did you ask Mr. Miller, when he asked you to make the investigation, for the bond redemption forms? A. No, sir.

Q. Did he mention them? A. No, sir.

Q. Did you make any attempt to locate the bond redemption forms? A. No, sir.

Q. Were they in the bank at that time? A. I presume so.

Q. Would that have assisted you in your investigation? (966) A. It might have and it might not.

Q. Well, let me get rather specific. Would it have

helped you if you took these eight redemption forms to a teller and the first question you asked was, "Is that in your handwriting—the amount paid out on the bond?" Would that have assisted you? A. Yes.

Q. Did you want to find out all the details for Mr. Miller of the cashing of these bonds? A. Yes, sir.

Q. And you made no effort to locate the redemption forms? A. No, sir.

Q. Now, after you left Mr. Miller, what was the first step you took in your investigation? A. I asked the people in the department who handled cashing of bonds if they were familiar with any names or having cashed any bonds for that particular party.

Q. By Department, you mean people who were employed as tellers? A. That is right.

Q. Who was the first person you saw? A. The only one who could possibly have cashed (967) them who is at present employed by the bank was Mr. Lucey.

Q. Why do you say that, the only person that could have cashed them? A. Because he was the only teller at that time who had been employed at that time.

Q. During that period of time? A. During that period.

Q. Will you tell us once again what you said to Mr. Lucey and what Mr. Lucey said to you? A. From what I can recall, I asked him if he knew or had handled any transaction similar to that or a transaction of cashing bonds for the particular party. And he said he did not recall.

Q. Did you mention the name Chernoff specifically? A. I do not recall.

Q. Did you show him the letter? A. No, sir.

Q. Did you show him the schedule letters, 20-A? A. No, sir.

Q. Did you show him the schedule that was 20-B? A. No, sir.

Q. If you can't recall that you mentioned the name

Chernoff and you didn't show these documents to him, which you have testified are the only ones you had at (968) that time, how do you know he knew what you were talking about? A. Well, I must have mentioned the name Chernoff, then.

Q. What did you do after you finished with—withdrawn. Did you point out to Mr. Lucey that there were 59 bonds listed on these schedules? A. No, sir.

Q. All you asked Mr. Lucey then was, and you think now that you mentioned the name Chernoff to him, you must have, from what I have just gone over with you, you say, you just asked Mr. Lucey if he knew anything about the cashing of these bonds, is that correct? A. Right.

Q. You could have checked the story, couldn't you have? A. Yes.

Q. How? A. By going through the redemption forms or if the photostatic copies of the bonds were available and findings out whose initials happened to be on those bonds.

Q. Did you make that step? A. No, sir.

(969) Q. Why not? A. I relied on his word and his statement that he could not recall any transaction for that.

Q. You didn't go over it very thoroughly with him, did you? A. No, sir.

Q. So we can clarify this: To your recollection, now, are these documents, 20, 20-A and 20-B the only documents that you had in your possession all during the period of your investigation? A. Yes, sir.

Q. You had no other documents? A. No, sir.

Q. All right. What was the next thing you did after you interrogated or interviewed Mr. Lucey? A. I reported back to Mr. Miller.

Q. Didn't you tell us this morning that you interviewed some of the tellers? A. Possibly others, not primarily

in the tellers' department, or the people that had been hired subsequently.

Q. I don't know what you mean by not necessarily people not in the tellers' department. Who else would you have interviewed? A. There were several people; there is the note (970) teller department, the loan and discount connected with the department, all at one side of the office.

Q. Would they have something to do with the cashing of these bonds? A. No, sir.

Q. Why did you interview them? A. In case they might have heard something or known something about it.

Q. I ask you again, before you reported back to Mr. Miller who was the next person you saw after you saw Mr. Lucey? A. I do not recall.

Q. Did you in fact see anyone else? A. There were other tellers there, yes.

Q. Did you in fact see or talk to anyone else? If my question isn't clear, you tell me. A. There were other tellers at the time.

Q. Yes. I think— A. After I stated I believe that Mr. Horan and Miss Graef had left. I just asked them. Do you want me to continue?

Q. Yes. I have cut you off twice. Yes, please continue. A. (Continuing) If they knew of anything that (971) others might have said, Mr. Horan or Miss Graef, to them about any transactions of bonds that had been cashed. There was no logical explanation for my doing so because they would have no bearing on the cashing of any bonds.

Q. There is no logical explanation, because you were in fact never requested to make an investigation; isn't that the fact, pure and simple, Mr. Wilmot? A. No, sir. I was asked to find——

Q. There isn't much logic in your whole story, is there,

Mr. Wilmot? A. I was asked a question to find out if anybody recalled any transaction and the redemption of bonds.

Q. I will ask you again, who was the next person you saw after you saw Mr. Lucey? A. I do not recall.

Q. Did you in fact see anyone? A. Yes.

Q. Was it one person? A. I do not recall.

Q. Was it two persons? A. I do not recall.

Q. Was it three persons? A. The same answer.

(972) Q. It would be the same if I went up to twenty-five? A. We don't have that many people.

Q. So I couldn't go up that high. Would it be the same if I went up through every employee of the bank— A. No.

Q. —at that time? A. No.

Q. Well, where would it change? Who do you remember that you spoke to? A. I do not recall offhand.

Q. All right. But I think you did state you did not interview Mr. Horan? A. I did not.

Q. He was no longer employed at the bank; correct? A. That is correct.

Q. You did not interview Miss Graef? A. No, sir.

Q. She was no longer employed at the bank? A. Right.

Q. I think you mentioned their names this (973) morning. When did you first learn of their names as being connected with these bonds? A. Possibly a few days ago.

Q. How did you learn that? A. From one of my superiors.

Q. Who is that? A. Mr. Brennan, I believe.

Q. Did you discuss the case with him? A. Slightly.

Q. All right. There came a time, you say, when you reported back to Mr. Miller. How long after he gave you the assignment to investigate the facts surrounding the cashing of these bonds did you report back to Mr. Miller? A. Possibly that same day; I do not recall.

Q. You probably spent one day investigating the facts of this? A. Not the entire day, no.

Q. Less than a day? A. Probably.

Q. About a half a day? A. It wouldn't take that long to question one or two people.

Q. In fact, from what you have told us so far, (974) it wouldn't take more than three minutes, would it? A. That is right. It might take four or five minutes.

Q. Four or five. Or probably ten, maybe, on the outside? (No answer)

Q. Did you make a report to Mr. Miller? A. Yes, sir.

Q. Was that report written? A. No, sir.

Q. It was oral? A. Yes, sir.

W. What did you say to Mr. Miller and what did he say to you? A. As I recall it, I said the party that I questioned had no recollection of these bonds being redeemed. And that was all.

Q. Did Mr. Miller comment? A. I believe not.

Q. You told him the party examined knew nothing about it? A. The party or parties I questioned.

Q. After you made your report what if anything did you do? Did you further investigate the facts? A. No, sir.

(975) Q. Did you do anything with respect to this case? A. Not after I made my report, no, sir.

Q. And that was, according to your recollection now, the same day sometime in July? A. Yes, sir.

Q. After the letter of July 19 was received? A. Yes, sir.

Q. Did Mr. Miller ever discuss the facts of those cashings with you at a subsequent time? A. Not that I recall.

Q. You had no discussions with Mr. Miller? A. No, sir.

Q. Did you ever discuss the facts of this case with a Secret Service agent? A. Not that I recall.

Q. Did you ever discuss the facts of this case with a Mr. Dorff from the law firm of Dorff & Levy? A. Not that I recall.

Q. Did you ever discuss the facts of this case with a

lawyer by the name of Levy from the firm of Dorff & Levy? A. No, sir.

Q. Did you ever discuss the facts of this case (976) with a man by the name of Weiss from Dorff & Levy? A. I do not recall that.

Q. I am going to read to you a paragraph from a letter which is in evidence, Mr. Wilmot, and then I am going to ask you a few questions about it.

The letter is dated June 4, 1952. It is on the stationery of Dorff & Levy. The paragraph reads as follows:

"We have been advised that a person"——

And I would ask you to follow this carefully.

"We have been advised that a person came into the bank with a depositor of the bank, one Irving Mishel. This person signed the bonds in the presence of a teller of the bank and asked the teller to redeem the bonds. The teller asked for identification and Mr. Mishel, who was with that person, told the teller that Mr. Miller knew Mishel and that he was identifying the person as the payee named in the bonds. Mr. Mishel and the person with the bonds went over to Mr. Miller and the latter asked Mr. Mishel who the person was. Mr. Mishel introduced (977) that person to Mr. Miller as Mr. Chernoff, the man in whose name the bonds were registered."

Did your investigation disclose any such matter as I have just read to you? A. No, sir.

Q. You never gave this information to anybody from the law firm of Dorff & Levy, did you? A. I do not recall having. I might have.

Q. When did you come into possession of this knowledge that I just read to you? A. When you read the letter now.

Q. Then you could not very well have discussed it with Mr. Dorff or Levy, could you? A. I do not think so.

Q. Is this time the first time that you are aware of the

facts, the alleged facts, contained in that second paragraph? A. I don't know.

Q. Would you try and search your memory and see if you heard them at any other time? A. That is some time ago, that letter, and I cannot recall.

Q. But this certainly does not reflect the (978) results of your investigation, does it? A. I stated my investigation and apparently it doesn't coincide with that.

Q. Now, Mr. Wilmot, you gave testimony this morning as to the duties of tellers. Let us assume this case: A customer comes into the bank with the owner of registered United States Savings Bonds, Series E. They go to the officer.

What, if anything, would the officer do, assuming further that there is a redemption form presented to the officer? What, if anything, would the officer do with the redemption form? A. He might okay it for cashing bonds.

Q. How would he okay it for cashing bonds? A. By his initials.

Q. Can you tell us what the purpose of this redemption form is? A. It's for records of knowing who we cashed bonds for.

Q. And knowing what else? A. That is primarily all.

Q. Is the bank ever interested to know what employees of the bank were involved in the various transactions at the bank? (979) A. That would show on the bonds, who was responsible for having cashed any bonds.

Q. And what happened to the bond very shortly after it is cashed, Mr. Wilmot? A. The bonds are redeemed once a month through the Federal Reserve Bank.

Q. That is right. So that is not the permanent record of the bank, is it? A. No, sir.

Q. What is the permanent record of the bank reflecting the cashing of the bonds? A. We have a register denoting the serial number of the bond, the face value of the bond and who it was cashed for.

Kenneth G. Wilmot—for Defendant—Cross

Q. So this is really superfluous, the redemption form? A. In a way.

Q. Does the redemption form reflect anything that the bond register does not? A. It might show who identified the owner of the bond.

Q. And wouldn't the bank be interested in that in the event they had to investigate, as you were called upon to investigate in this very case, Mr. (980) Wilmot? A. The redemption forms would show if the customer himself cashed the bond or if he introduced a stranger to have the bond cashed.

Q. So it should reflect that knowledge, should it not? A. Yes.

Q. As a permanent record of the bank? A. Yes, sir.

Q. Mr. Wilmot, from your experience at the bank I am going to ask you several questions about a few of these exhibits.

The first one is Government's Exhibit 5-A in evidence. I show you that redemption form and I ask you if you went through the records of the bank and you pulled out that redemption form, who would you say identified the registered owner of those bonds from that record? A. A person by the name of Thomas Young.

Q. I ask you the same question with respect to Government's Exhibit 6-A in evidence. A. The same, Thomas Young.

Q. I ask you the same question with respect to Government's Exhibit 8-A in evidence. (981) A. The same, Thomas Young.

Q. So in all those cases, that would indicate to you that a person by the name of Thomas Young had been the identifier; is that correct? A. That is correct.

Q. Now, you have testified that you are familiar with the duties of the various tellers and their procedures and so forth.

I show you Government's Exhibit 2-A in evidence and

I show you the handwritten notation in ink on the top, "Miller."

Now, assume for the moment that Virginia Graef wrote that name "Miller" on there. From your experience, why would she have written that on there? A. As a means of identifying a party known to Mr. Miller.

Mr. Hallinan: I have no further questions.
The Court: Anything else?

Redirect examination by Mr. Rosenblum:

Q. At the time when you made your investigation, did you know that the letter advised the bank that a Secret Service agent was coming to the bank to conduct an investigation (handing document to witness)? A. Yes.

(982) It is right in the letter, isn't it? A. Yes, sir.

Q. Was your investigation anything more than a perfunctory investigation? A. No, sir.

Q. You say you talked to persons who made up the tellers at the time? A. Yes, sir.

Q. And the only one who was there at the time of the investigation who was at the bank as a teller at the time of the cashing of the Chernoff bonds was Lucey? A. Yes, sir.

Q. And you spoke to him and you reported to Mr. Miller as to what he said? A. Yes, sir.

Q. Did you understand it was your duty to go out to the home of Horan to make this investigation? A. No, sir.

Q. Or to the home of Miss Graef? A. No, sir.

Q. Did you know whether or not the Treasury Department would want you to go out to investigate those people and go to their homes?

(983) Mr. Hallinan: I will object to that, your Honor. It is his understanding of what he under-

stands the Treasury Department wants. He is doing it at the instruction of Mr. Miller.

Mr. Rosenblum: Mr. Miller said, "Make an investigation."

He sees a letter and he knows an agent is coming. He has a right to express his opinion as to how far he should go.

The Court: I will sustain the objection as to form.

Mr. Rosenblum: Exception.

Q. I again bring to your attention from Exhibit 20, that is, Government's Exhibit 20 in evidence, the part here which reads:

> "Photographs of bonds, one or more, for each date of payment are enclosed to assist you on item 2 above."

From that did you understand that all the Chernoff bonds were supposed to be there or just some? A. Some.

Q. Think back, Mr. Wilmot, and see whether or not you can recall that not a batch of bonds as those that I hold in my hand here covering 1 to 8 made up (984) of 59 bonds, but see whether or not you can recall that there was attached to the letter in addition to the two items which are the schedules referred to as 20-A and 20-B, see whether you can recall whether or not in fact when Mr. Miller gave you the letter he had attached to it the photostats of those particular bonds which were part of it.

Mr. Hallinan: I will object on the ground it is leading. He has made it very easy for the witness.

The Court: It is all right. Let us see if the witness can answer.

A. He would not have those bonds. They were not attached to the letter.

Q. You would say they were not attached? A. No.

Q. You say even though the letter said, "We attach hereto those bonds"? A. That is correct. The photostat copies can be in the possession of Mr. Miller, but he would turn over the letter to me without that copy.

Q. In other words, it is your recollection he did not turn over the bonds? A. Yes.

(985) Q. I thought this morning when I examined you you were of the recollection that he did turn over the bonds. That is why I asked you this again. This goes back now for how many years—about six? A. I believe that was in 1950. Yes, six years.

Q. That would be a little more than six years? A. Yes.

Q. You really have a positive recollection as to whether he did turn over some bonds or he didn't at that time?

Mr. Hallinan: Is this impeachment, your Honor?

The Court: I will take it. Overruled.

A. After six years, I can't say.

Q. You are not really sure either way? A. I am not really sure.

Q. You said you were studying voice for several years? A. Yes, sir.

Q. And did you know that Mr. Miller was a subscriber to the opera? A. I did.

(986) Q. And were there occasions when he gave you some opera tickets when he could not use them? A. Right.

Q. Do you know whether or not he also gave some to his secretary? A. I believe he did.

Q. Did he give you those opera tickets so that you could now testify as you have testified? A. Certainly not.

Mr. Rosenblum: No further questions.

Kenneth G. Wilmot—for Defendant—Re-cross

Re-cross examination by Mr. Hallinan:

Q. But you don't dislike Mr. Miller for giving you the tickets, do you, Mr. Wilmot? A. No, sir, because we were both interested in the same thing.

Q. I understand that. Mr. Rosenblum asked you was it your understanding that you had to go to the home of Mr. Horan. That wasn't your understanding, was it? A. No, sir.

Q. You did not have to make a long trip out to where Mr. Horan lived? A. No, sir. It wasn't my province to go out to his home.

(987) Q. You did not have to go to Miss Graef's home, did you? A. No, sir.

Q. Or to either of their places of employment, did you? A. No.

Q. You had a phone in your office, didn't you? A. That wasn't within the province of my investigation.

Q. You had a phone in your office, didn't you? A. There were several in the office.

Q. The province of your investigation, then, was what? You tell me. A. To question the person or persons that had the duty of cashing bonds.

Q. Why wasn't it in your province to interview Horan and Graef? A. Because that was up to the Secret Service Department when they were entering the investigation.

Q. Will you elaborate on that? What do you mean by that? A. Pardon me?

Q. Would you elaborate on that. I am not quite sure I know what you mean by that, that was up to the (988) Secret Service. Who told you it was up to the Secret Service? A. The Secret Service was coming in to investigate.

Q. Coming in to the bank? A. Yes.

Q. From that you concluded it was their province to see Mr. Horan and Miss Graef? A. It wasn't up to me to investigate them.

Q. You just told me it was up to you to investigate the facts of the cashing of these bonds. A. For those that were employed by the bank at that time.

Q. Who told you that? A. That was my understanding.

Q. Where did you get that understanding from? A. As head of the department.

Q. As head of the department? A. Yes, sir.

Q. Did you get that understanding from Mr. Miller? A. I have been given certain jobs to do.

Q. Go ahead. A. And I have to use my mind, my knowledge of what comprises that work.

(989) Q. It was your understanding, then, that you were only to investigate part of the facts; is that correct? A. For those that were presently employed.

Q. You had in the bank at that time both Mr. Horan's and Miss Graef's home addresses, did you not? A. I presume so.

Q. Don't presume. You know as a fact that the bank maintains for several years thereafter the addresses of former employees, don't they? A. Yes, sir.

Q. And in many instances the addresses reflect new employment of where they are employed, does it not? A. Yes, sir.

(990) Q. You knew then, didn't you, that you had available the addresses of former employees? A. Yes, sir.

Q. You have told me before that you knew to go to Lucey because he at that time was the only employee who was employed at the bank during the period of these cashings, is that correct? A. That is right.

Q. So if you wanted to, it wasn't a long trip to somebody—

Mr. Rosenblum: I object to the form of that question.

The Court: Sustained.

Mr. Hallinan: I have no further questions.

Mr. Rosenblum: No further questions.

The Court: All right.

(Witness excused.)

Mr. Rosenblum: May I just go to the witness room for a moment, and then I will come back.

(Mr. Rosenblum left the courtroom and then returned.)

Mr. Rosenblum: Mr. Miller, will you take the stand?

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(991) JAMES W. MILLER, the defendant, called as a witness on his own behalf, being first duly sworn, testified as follows:

Direct examination by Mr. Rosenblum:

Q. Mr. Miller, will you tell us, please, what is your occupation at the present time? A. I am in the confectioner's and baker's specialty supply business.

Q. What is the name of your company? A. Haug & Company, Incorporated.

Q. Haug & Company? A. Yes, sir.

Q. Where is their office? A. 99 Wall Street.

Q. How old are you, Mr. Miller? A. I am in my 60th year.

Q. Are you a married man? A. Yes, sir.

Q. You have a wife? A. Yes, sir.

Q. A child? A. Yes, sir.

Q. How old is she? A. Twenty-eight.

(992) Q. She lives at home with you and your wife? A. Yes, sir.

Q. Now, tell us, please, about yourself, first starting from the time you were born. Where were you born? A.

I was born in Cartersville, Georgia, a small town near Atlanta.

Q. Tell us whether you had your schooling down there, in a general way. A. Yes, I went to school in Augusta, Georgia, Birmingham, Alabama, and finished grammar school when I was twelve years of age, in Birmingham.

Q. And from then, what schooling did you have after that? A. I went through high school, business college, and four years at the American Institute of Banking, here in New York City.

Q. Will you tell us, please, at what age you went to work? A. Twelve years of age.

Q. Will you tell us what you did? A. I worked as a table boy in an ice cream restaurant parlor so I could go through high school.

Q. That was after you graduated from public school? (993) A. Yes.

Q. And went into high school? A. Yes.

Q. And was that just a part time job? A. Well, yes, it was from 4 in the afternoon until midnight and from midnight to—from noon to midnight on Saturdays and Sundays.

Q. Will you tell us what you did after that? A. The last year in high school I went to work for the Chattanooga Times, in the mail room.

Q. The what? A. Chattanooga Times?

Q. Chattanooga? A. Chattanooga, Tennessee, yes. In the mail room. I worked from midnight until about 4:30 in the morning.

Q. And did you complete your Chattanooga High School? A. Yes; I was 16 when I finished there.

Q. What did you do after that? A. I got a job with a surveying crew out in the mountains. I had tuberculosis. So, after two years I was all right. I came back to Chattanooga. I went through business college, got a job with the N. C. and St. Louis Railroad, worked as a secre-

tary to the freight agent, (994) and from there I got a job with an accounting and industrial inspection company. They had an office in Chattanooga.

Q. What work did you do? A. Well, I was a secretary to the manager of the office. And then they moved me to Philadelphia as secretary to the general manager of the company.

Q. Were you married by that time? A. Not yet, no.

Q. I see. A. Then they moved me to Pittsburgh as assistant manager of the office. Then I got married in Pittsburgh. That was 1918. Then they moved me to Baltimore.

Q. When you say they moved you— A. The company that I was working for, the same company.

Q. You were assigned to a new area? A. Yes. Baltimore.

Q. Will you tell us what type of work you were doing, or were you continuing to do the same work? A. Well, I was assistant manager, but then they put me on the road selling the services in Virginia and Maryland and West Virginia. Then I got a little tired of that traveling all the time, away from my wife (995) five days a week, so I gave that up. I went to Poughkeepsie, New York, and I got a job with the New Haven Railroad as secretary to the division superintendent.

Q. Can you give us either your age or—I want to fix milestones in this thing. Can you tell us what age you were at that time? A. Twenty-three.

Q. What was the year that this occurred? A. That was in 1920.

Q. About 1920? A. It was 1920.

Q. You were then twenty-three years of age? A. Yes.

Q. Will you tell us, please, what you did after that? A. I wanted to get in the banking business for many years. So, we had saved up a little money, and my wife and I decided we could take a chance and come to New York.

Q. In what year did you come to New York? A. 1920.

Q. 1920. That is the same year you referred to? A. Yes.

Q. When you were twenty-three years old? (996) A. That is right.

Q. Will you tell us, please, what you did in New York? A. I came to New York and I got a job in the Federal Reserve Bank.

Q. Doing what? A. I started out as a money counter.

Q. As what? A. A money counter.

Q. Money carrier? A. Money counter.

Q. Money counter. A. Yes. But I was taken off of that work and put in charge of the collections, certain type of collections called bill of lading collections. I stayed there for five years. It was during that time that I went to the American Institute of Banking at night for four years.

Q. That means you were there from 1920 to 1925? A. That is right.

Q. Is that right? A. Yes.

Q. You say it was during that time you went to the American Institute of Banking? (997) A. That is right.

Q. Did you say that was a night course? A. Night course, four years, yes.

Q. Did you complete the course? A. Yes.

Q. Will you tell us, please, what you did after that? A. Well, while going to the Institute I met an officer of another bank, and he asked me at one time if I would like to consider coming over to his bank. And, actually that is what I was training for and looking for. So he took me up to the bank. It was a small bank on West 23rd Street.

Q. What was the name of that bank? A. Century Bank.

Q. Century Bank? A. Yes. It was owned and controlled by Professor Pupin. So, he made me a very nice offer and said that—to induce me to come there he would make some stock in the bank available. He asked me how much I had. And I told him $2000.

So he said, "I will get you Miss Jenkins' stock, she wants to get out of the bank, anyhow; you can pay $2000 down and pay the rest," he said, "whenever (998) you want to."

So I went with the bank assistant cashier and a director of the bank.

About three years later we had built the bank up from, I think, deposits of $300,000 to $3,000,000. And we then, Professor Pupin and all of us, we sold the bank, and at a very nice profit.

Q. That is you sold your stock interest in the bank at that time? A. Yes, sir. Everybody in the bank sold it.

Q. And you continued on with the bank after that? A. Yes, I continued with the new people.

Q. With the what? A. With the new people who bought the bank.

Q. Keep your voice up so all the jurors can hear you. With the what? A. The new group of people who bought the bank.

Q. Will you tell us what you did? What post did you hold? A. Well, I was assistant cashier. The bank was later merged with the Interstate Trust Company and I was assistant vice president, and I was——

Q. What year was that? A. Oh, I would say about '28.

(999) Q. Will you tell us, please, what you did after that? A. '29. Well, '28 or '29.

The bank was merged into the Interstate Trust Company, and I was moved to the 42nd Street office of the Interstate Trust Company. I stayed there——

Q. Did you continue as an officer of that bank? A. I was head of that office. That was the largest office they had. They had nine offices——

Q. I was directing your attention as to whether or not you continued in that office. But you did continue as an officer, I think you said? A. Yes, yes. I was assistant vice-president in charge of the 42nd Street office.

Q. When you moved to the other one you continued— A. Continued to be assistant vice-president, yes.

Q. Will you tell us what you did after that? A. That bank was merged with, let's see, Interstate Trust, Equitable Trust, Chase National Bank. It all took place rapidly, one month after another.

Q. You drop your voice and I can't hear you and I don't think all the jurors can hear you. Keep your voice up so that all the jurors can hear you. A. I say the bank was merged, Interstate Trust (1000) Company was merged with the Equitable Trust Company and Equitable Trust Company was merged with the Chase National Bank. And at that time——

Q. Did you continue on with the banks— A. Yes.

Q. The banks? Did you continue on with the banks which resulted from the merger? A. Yes, sir.

Q. You were up to the Equitable Trust Company. A. Chase National.

Q. Chase National Bank. A. Yes.

Q. Will you tell us, please, what your position with the Chase National Bank was? A. I was Assistant Vice President and actually I resigned just within a couple of weeks while the merger took place, so I didn't work with the Chase very long. I had really already turned in my resignation before the merger was effected.

Q. What did you do after that? A. I went to the Pennsylvania Exchange Bank.

Q. Now, let us see if we can fix that time when you went with the Pennsylvania Exchange Bank. A. It was 1930.

(1001) And will you tell us, please, what position you occupied in the Pennsylvania Exchange Bank when you first went with them? A. I was vice-president.

Q. And with what office did you go when you first went with the Pennsylvania Exchange Bank? A. They had

only one office at that time, the 26th Street and Eighth Avenue.

Q. How long a time did you continue with the 26th Street office? A. Until 1946.

Q. 1946. Tell us, please, what happened at that time. A. Well, in 1946 I built this office here, 48th Street, and I moved up there.

Q. You say "I built this office here." What do you mean? A. Well, the bank built the office.

Q. Were you a stockholder at the time? A. Yes.

Q. When did you become a stockholder in the Pennsylvania Exchange Bank? A. I would say a few years after I went there.

Q. Which would make it approximately what year? (1002) You went with them in 1946, you say? A. Sometime between 1930 and 1935.

Q. You bought stock in the Pennsylvania Exchange Bank between 1930 and 1935? A. I believe so, yes.

Q. That was before you went with them? A. I was there in 1930.

Q. Oh, you went with him—excuse me—you went with them in 1930? A. Yes.

Q. A few years after that you became a stockholder? A. Yes.

Q. About 1933 or 1935? A. Yes.

Q. And then you say in 1946 the new bank was built? A. That is right.

Q. And will you tell us whether you moved up to the new bank which was built? A. Yes, that is right.

Q. Where was that bank? A. 20 West 48th Street.

Q. What post did you hold at the time you went (1003) up to the bank at 48th Street in 1946? A. I was still vice-president.

Q. You were still vice-president at the time? A. Yes, in 1946 I was still vice-president.

Q. All right. Now, will you tell us, please, for how long a time you continued holding the office of vice-president? A. Until 1947.

Q. And will you tell us what happened at that time? A. I was elected president.

Q. And when you say president, will you tell us whether or not by that time the branch at 26th Street had been moved, too? A. No, not at that time.

Q. When was that branch moved? A. About '48 or '49.

Q. And was that the time the 26th Street branch was moved to 38th Street and Eighth Avenue? A. Yes.

Q. And when you became president, was there just one president of both banks? A. That is right.

Q. And you were that president? (1004) A. That is right.

Q. And can you tell us, please, for how long you continued as president? A. I think it was six or seven years.

Q. Can you tell us for how long you continued with the bank? A. I think it was March, 1954.

Q. Now, at that time had you moved up from president to another post? A. Chairman of the Finance Committee.

Q. Then you say you resigned in about March, 1954? A. That is right.

Q. Can you tell us, please, whether or not that was as the result of the occurrences which became the subject matter of the investigation, the matters pending in this court? A. It was.

Q. And you resigned of your own free will at that time? A. Yes, sir.

Q. Now, also, will you tell us whether, outside of the matters that I referred to as those which came into being in this court, whether you were ever convicted (1005) in your life? A. No, sir.

Q. Were you ever arrested in your life? A. No, sir.

Mr. Rosenblum: Now, your Honor, do you want to take a recess? I am going into something else.

The Court: All right. We will take our mid-afternoon recess now. Don't discuss the case.

(Short recess.)

(Jury in box.)

JAMES W. MILLER resumed.

Direct examination (continued) by Mr. Rosenblum:

Q. Going back further a while, Mr. Miller, will you tell us whether or not during the period of time you covered you were connected with the Ninth Federal Savings and Loan Association? A. Yes, I was a director and officer there at the same time I was in the Pennsylvania Exchange Bank for a period of about ten years.

Q. Will you tell us what your duties were in connection with the Ninth Federal Savings and Loan Association? A. I had charge of all their investments other than mortgages.

(1006) Q. And can you give us the years that you were with that institution? A. About 1936 or '37 to '46 or '47.

Q. And were you receiving compensation for that work? A. Yes.

Q. Now, can you tell us whether or not you were also connected with the Metropolitan Mutual Auto Insurance Company? A. Yes.

Q. Will you tell us, if you can, the years that you were associated with that company? A. About '37 or '38 to about '41, I would say. It was three years.

Q. And will you tell us what your duties were? A. I

also had charge of all of their investments. They had no mortgages.

Q. When you say you had charge of investments for the two companies, just what do you mean by that? What did you do? A. Whenever they had money to invest, I selected the securities that that money would be invested in and picked the time when those securities should be sold or substituted for other securities.

(1007) Q. And the first was a savings institution? A. Oh, yes, Federal Savings and Loan Association.

Q. Coming back, Mr. Miller, to the Pennsylvania Exchange Bank, I will ask you now were some of those duties that you have described overlapping, that is, while you were with the Pennsylvania Exchange Bank did you discharge the duties for the Savings and Loan Company and for the Casualty Company, too? A. At the same time, yes.

Q. They were overlapping? A. Yes.

Q. Is that Casualty Company known by the same name today? A. No. It was merged. That is when I left the outfit, when it was merged into the Manhattan Mutual Insurance Company.

Q. Now, coming back to the Pennsylvania Exchange Bank, I ask you whether there was a time when you met a person by the name of Irving Mishel? A. Yes.

Q. Will you tell us, please, about when you met him? A. Well, I can tell you this not from memory. I have looked at the records recently. I met him in (1008) October of 1947.

Q. Are there other institutions with which you were connected other than the two I brought to your attention? A. Well, not any institution——

Q. Did you serve on any boards as a director? A. Yes.

Q. Will you tell us, please. I want to cover that subject completely before I go into the other. A. I was a director of the 23d Street Association, which is a civic association, for a period of twenty five years.

I was an arbitrator for the American Arbitration Association for a period of twenty-five years. I was, and still am, a member of the New York Committee of the Small Business Administration of the Government.

Q. Is that an appointment by the Government? A. Yes.

Q. And you still hold that position? A. Yes.

Q. Any other? A. Well, I was on one of the committees for the Charity Organization Society, Hudson Guild, Chelsea Association.

(1009) Q. There are a number of those of that kind? A. Yes. I can't remember them.

Q. I do not want the details of them. Go back for the moment to the time you say you met Irving Mishel. Please tell us when and how you came to meet him. A. That was October, 1947. Well, one of my duties, of course, was to promote the business of the bank and get as many new customers as I could.

Q. Will you tell us whether the duties of all the officers was to try to get as much business as you could? A. That's right; particularly mine.

Q. You mean under your heading as president you devoted a substantial amount of your time to that? A. Yes.

Q. Now, will you tell us, then, how you came to meet him? A. Well, I was after my present customers to get me new customers, and Mr. Luria brought Mr. Mishel into the bank and introduced him as a prospective customer.

Q. Now, tell us, please, what do you know about Mr. Luria? A. He was a depositor in the bank.

(1010) Q. A customer of the bank? A. Yes.

Q. Can you tell us for how long a time he had been a customer of the bank when you say you met Mr. Mishel through him? A. I can't tell you exactly. I would say a couple of years. He is still a customer there.

Q. He still is a depositor at the bank? A. Yes.

Q. Where was it that you met Mr. Mishel? A. It was in the bank.

Q. And was Mr. Luria there at the time? A. Oh, yes. He brought him in and introduced him.

Q. Tell us what happened at that time. You tell us instead of my asking you. A. I can't remember every little detail. He brought him in and said he was a prospective depositor, and I asked Mr. Mishel what line of business he was in. He said he had a liquor store, package store, in the Bronx, and he said he would open the account providing that he could be assured of some credit. We made a number of loans to package stores, and I told him I thought we could if he filed a statement.

(1011) Q. Had you particularly engaged in trying to get liquor stores as customers? A. Yes, we made a particular appeal to that. As a matter of fact, we had quite an elaborate program that we pursued in trying to get that kind of business.

Q. Can you tell us whether that was a more desirable type of business? A. Well, it was very good business, yes.

Q. You know that liquor stores is a cash business? A. Yes, and a licensed business, controlled by the State. Our experience with them over a period of years was very, very good.

Q. Do you know whether then or shortly thereafter Mishel opened an account with the bank? A. Yes, I would say within a week or so.

Mr. Rosenblum: May I have the signature cards of Mr. Mishel?

(Mr. Hallinan hands documents to Mr. Rosenblum.)

Mr. Rosenblum: What I am trying to get, your Honor, is the first card.

The Court: What exhibit number is it?

Mr. Rosenblum: I don't know.

(Mr. Hallinan hands documents to Mr. Rosenblum.)

Mr. Rosenblum: Will you mark these, please. (1012) separately?

(Defendant's Exhibits G, H, I and J for identification marked.)

Mr. Rosenblum: Mark these, please.

(Defendant's Exhibits K, L and M for identification marked.)

Mr. Rosenblum: Mark this also.

(Defendant's Exhibits N and O for identification marked.)

Q. Mr. Miller, before I show you any of these bank records, can you fix the approximate date when the first account was opened, the one you described before? A. Well, I can only fix it because I saw these records recently. I mean I haven't any independent recollection of it.

Q. Can you give us an approximate date? A. It was in the latter part of 1947.

Q. I will show you these exhibits without any particular order, J for identification, I am showing, K for identification, L for identification, M for identification, N for identification, O for identification, G for identification, H for identification, I for identification; and also 43, 44, 10 and 11, the last four being in evidence, and ask you to tell us whether among these, (1013) if it is there, you can give us the first opening sheet or opening card, the signature card, either one or both? A. (After examining documents) The first one isn't here.

Q. Well, can you tell us, if these will assist you in giving us the information, if you can recall what appeared on the first card, and when I say, "Card" I am referring to a signature card? If you can recall, tell us what did

appear on the first card that was used at the time the account was opened. A. It would be the title of the account, the signature of the person authorized to sign, the address of the firm, telephone number, initials of the person who opened the account, initials of the person who opened the account and would get credit for it.

(1014) Q. Can you tell us whether one— A. (Continuing) The type of business.

Q. Go ahead. A. That is about all.

Q. Can you tell us whether one of the cards which is marked for identification or in evidence that I have just shown you is of the type which was used at the time Irving Mishel opened the first account? A. Well, it should have been one of these salmon-colored cards. We had different colored cards to differentiate different types of accounts.

Q. You hold in your hand and you are directing to my attention a salmon-colored card marked M for identification, is that right? A. Yes.

Q. Now could you tell us whether or not this was the type of card which was used at that time? A. Yes, it should——

Q. And I bring to your attention that in the lefthand corner on the bottom it says "Form 17E5M10-46." A. Well, that is the date that the form went into effect.

Q. So that in all, would you say then that it (1015) is your best belief that one of these cards this type, identified as M for identification, was used at the time? A. Yes, it should have been.

Q. Now will you tell us, please, as to what the words "introduced by" and then giving the initials, meant to you and meant to the bank when it was put on one of these cards? A. The officer or director of the bank who would be credited with having brought in the business, originated the business.

Q. Were only the officers and the directors the ones who received credit? A. Yes.

Q. Will you tell us just what the words, and I am referring to the printed matter on the cards, "Account Opened By," means A. Well, that is the officer or clerk or secretary who did the physical work of accepting the initial deposit, either filling out this opening sheet or seeing that it was filled out.

Q. Do you recall the name of the liquor store that you referred to at the time the account was opened? A. I believe it was Berkshire Wine & Liquor.

(1016) Q. Company? A. Company, yes. I don't know whether the word "company" was on it, but it should have been. My memory is it was an unincorporated business.

Q. This card that I hold in my hand which is M for identification, is that a signature card? A. It is a signature card.

Q. Can you tell us what that contains, which is to be used in connection with the issuance of checks? A. It contains the signature which is authorized to be on the checks.

Q. Now in addition to the cards at the time the account for Mr. Mishel was opened in the manner you have described, the Berkshire Wine & Liquor, and you think the word "company" was on it, can you tell us whether there was also an opening sheet? A. There was an opening sheet similar to this (indicating).

Q. When you say "similar to this," and you picked up a paper— A. But it was a salmon-colored one.

Q. I see. The colors happen to be with the card in the opening sheet.

(1017) Q. When you said similar, you picked up 43 in evidence. A. Yes. But the wording would not be necessarily exactly the same.

Q. I see. Would it be substantially the same? A. Substantially the same.

Q. From the time that this account was opened, in the manner you described to us, can you tell us whether or not all other accounts which were opened by Mr. Mishel or the liquor companies were all credited to you? A. Yes, sir.

Q. Can you tell us whether or not if on an occasion Mr. Mishel opened another account which had nothing to do with the liquor company, would that be credited to you? A. Yes, sir.

Q. Can you tell us whether or not that means that you personally had to fill out the card?

Mr. Hallinan: I will object to this, your Honor. Three leading questions I did not object, but I will now. I think we are sufficiently far along so that I will request that leading questions (1018) be stopped.

The Court: All right. I will let this question stand. But don't lead any more.

Mr. Rosenblum: Will you read the question, please?

(Question read.)

A. No.

Q. Now can you tell us, within the course of the years from the time when you say you met Mr. Mishel and he said he would open or he then opened an account at the bank, until the present time, or until you left the bank, can you tell us how many other accounts connected, say, with his liquor business or from his wife or for himself were opened? A. Well, there were at least five other accounts in which he signed and had an interest in.

Q. And that required his signature either as an individual or an officer? A. Yes.

Q. Were they all at the 48th Street branch? A. Well,

those are the only ones I know about that were at 48th Street.

Q. Will you give us the names of those five additional? I think you mentioned the one Berkshire. (1019) Wine & Liquor Company. A. Mishel Wine & Liquor. Irving Mishel Special. Regal Amusement Company. Admiral Trading.

Q. Admiral Trading? A. Trading.

Q. Was that a company or a corporation, if you recall? A. I don't recall. And Helen Mishel.

Q. Have you recently at my request, or within the last year or so, checked records in order to bring back to your mind the details of accounts, names, and so on? A. Yes.

Q. Now tell us if you can what the relationship was, if any, between Berkshire Wine & Liquor Company and Mishel Wine & Liquor Company? A. I think one succeeded the other.

Q. Can you tell us what the Regal—give me that full name again, please. A. Regal Amusement Company I think.

Q. Can you tell us what that company was? A. They operated coin-vending machines, I believe.

(1020) Q. Will you tell us, please, if you can, what the relationship of Irving Mishel was with the Regal Amusement Company? A. I don't remember, except that it was an officer and signed on the account.

Q. He was a signer on the account, you said? A. I believe so, yes.

Q. Now how about Admiral? A. He was——

Q. Tell us what that company was? A. That was a finance company, bought notes from business houses.

Q. Now let us take for the moment Admiral, which you say was a finance company which bought notes from business houses. A. Yes.

Q. Will you tell us whether those notes were brought—whether or not those notes were brought to the Pennsyl-

vania Exchange Bank? A. Yes. Some were brought for collection, I believe, and some were brought for discount.

Q. During the years from the time that Mr. Mishel first met you and up to the time when you left the bank, and you told us the date when you resigned, will you (1021) tell us whether or not there was any credit, credit extended by the Pennsylvania Exchange Bank to one or more of the six accounts that you referred to a moment ago, the ones which you said Mr. Mishel was connected with and was a signer? A. Yes. Credit was extended to Berkshire Wine & Liquor Company, Mishel Wine & Liquor, Irving Mishel, Regal—Admiral Trading. I am not sure about Regal Amusement.

Q. In connection with the companies or corporations, the six you referred to, can you tell us whether or not Mishel was the only person who dealt with the bank in connection with loans which were obtained? A. Yes.

Q. Was there more than one type of loan extended to the companies and the individuals you referred to? A. There were three types of loans.

Q. Will you tell us, please, what those three types were? A. Well, one type was a direct loan where he borrowed on the note of the corporation, direct note. The second type was——

Q. Would that be a note of the corporation or a note of an individual connected with the corporation? (1022) A. No. The note of the corporation itself.

Q. Would that carry any guaranties? A. The guarantees of Irving Mishel and his wife, Helen Mishel.

Q. That is the first type. Now tell us what the second type of loan embraced. A. The second type was a straight collateral loan whereby he would—whoever the borrower was would deposit collateral, stocks or bonds.

Q. Were there any particular types of collateral required by the bank? Were they limited or unlimited? A. No. It had to have a market value. I mean, some place—it

had to be a stock or bond that we could somewhere get a quotation and see what the actual value of it was in the market.

Q. In other words, was it something that had to the officers a value that they thought the particular thing had? A. Yes. That could be verified by published quotations or quotations that could be obtained from brokers.

Q. What is the third type of loan that was made? A. It was the discount of customers' notes. That is, the notes that had been given by a third party (1023) to the corporation that was discounting them or had been purchased by that corporation. Of course in the finance company most of the notes would be notes that he had purchased from other holders.

Q. Would they be endorsed by either Mr. Mishel or another officer if it was a corporation that was doing the financing, or an individual if it was not a corporation? A. Yes. And also again guaranteed by him personally and by his wife.

Q. Will you tell us, please, just how loans were extended to Mishel for himself and for the companies you referred to, outside of the three types that you told us about? Was there an application made, or what? A. Well, it wasn't any formal written application. The borrower would simply come into the bank and discuss the matter with me and be first told that he would have to file a financial statement. After the financial statement was received I would give it, if he gave it directly to me, I would give it to the credit manager, who sat right behind me, and he would be informed that there was going to be an application——

Q. A little louder. (1024) A. He would be informed that an application for credit is being made.

Q. Will you tell us what his duties were in connection with the processing of a loan of that type? A. From that point on, he would take the financial statement and set

it up and analyze it, as we would call it; we would have a sheet where they are set up and they are analyzed to see whether the—how the current position was in relation to sales, and regular formulas that the credit department had to apply. Then he would check it through credit agencies, Dun & Bradstreet; there is another agency that he would check it through to see if there were any judgments against the—if it was a corporation, or the maker of the note or any of the individuals.

Q. He would check even those who guaranteed or endorsed the notes or—— A. Well, we only checked them once, yes, we checked them.

Q. Can you tell us whether under your system, credit information was received continuously as time went on? A. Yes. But I didn't quite finish, Mr. Rosenblum.

Q. Oh, please do. (1025) A. In addition to the checking that I just mentioned, he also would check with any other banks where the borrower or the prospective borrower had accounts or had previously had accounts. Then, on the credit agency, the account—if we made the loan—was put on what was called continuous service, so——

Q. Which meant what? A. Which meant that if the credit agency got any additional information during the year they were to advise us of it immediately. At the end of the year, if the account was still open and still borrowing, it was renewed. So we had a continuous report every time there was any change in the corporation or any change in the financial condition which had come to the attention of the credit agency.

Q. And that would be put in the file of the particular individual or company to which that pertained? A. The credit department, yes. They were filed as soon as—as soon as application was made a credit file was started in the credit department.

Q. Was that maintained in the credit department (1026) or in yours? A. Maintained in the credit department.

The credit department was upstairs on the balcony over the operating floor of the bank.

Q. Will you tell us, please, the method that was used by those in charge of the bank in granting or approving loans? Tell us who had that power, who had that right, and how was it exercised? A. Well, when the credit department had the file worked up on, let us say the first application, the credit manager would bring the file to my desk, and he would tell me what his opinion was, whether he had found anything that looked detrimental, any judgments, or if the checking showed that they were slow paying, they had been sued. They had a number of little things that you tick if they are detrimental. And if it is what we call clear then we would discuss the possibility whether he was entitled to the credit he had asked for.

Q. When you say "we discussed," who is the "we" that discussed? A. The credit manager.

Q. Who else? A. Well, that is all, up to the point——

(1027) Q. You said that. I did not know whether it included you. A. Yes.

Q. Any others? A. Myself.

Q. He first got the information, then he sat down and discussed the particular application and such information as he had lined up with you? A. That is right. He had a number of assistants who accumulated this information and put it in the file, and then he worked it over, and then he brought it to me and we discussed it, and if it looked like it was worth proceeding further on, according to the limits of the loan, if it was over my limit, then he made up a different form——

Q. Explain to us, please, when you talk about the limits of the loan, just what does that mean? You said "my limit," and then you said their limits. A. Well, I had definite limits on which I could make a loan.

Q. Did you have the right to make a loan up to a cer-

tain amount without approval of any other person? A. Yes.

Q. Or committee? (1028) A. Yes.

Q. Will you tell us what that amount was? A. On a direct loan it was $5000. On customers' notes it was $20,000. On collateral, some other figure I don't remember. A little higher, maybe.

Q. A little higher than the twenty? A. Yes.

Q. Will you tell us, then, where there was, say, a direct loan applied for beyond the 5000, which was your limit, who had to approve that? A. The executive committee.

Q. Will you tell us, please, who was on the executive committee? A. There were five directors and the chairman of the board, and the president, myself, were members ex officio.

Q. Did the chairman of the board and yourself as president have the right to vote? A. No, no vote.

Q. When a loan was approved by the executive committee, can you tell us whether or not it had to be unanimous? A. It had to be unanimous.

(1029) Q. Can you tell us the top limits of loans which Mr. Mishel and/or his companies and corporations received from the Pennsylvania Exchange Bank? A. Well, the high point at any time for all the accounts I believe was thirty some-odd thousand dollars.

Q. Can you tell us whether or not at the time he became a depositor or customer of the bank and he applied for loans, whether he filed a financial statement? A. He did.

Q. Can you tell us whether or not, as time went by, the bank required, and whether or not he filed, new statements as time went on and new periods were reached? A. Yes, he filed statements from time to time.

Q. Did that apply to his companies and corporations and did it apply to the individuals you referred to? A. Yes.

Q. Were those all incorporated within the credit file of the bank? A. They were.

Q. Now you said something about where some other (1030) officer was situated, and this might be a time that I can ask you to do this. Would you turn around, please.

Mr. Rosenblum: May I, your Honor?

The Court. Yes.

Q. Unless you want to come down here. (Witness stood at the diagram.)

Q. Will you tell us, please, looking at that diagram, tell us about where your desk was, and we are talking now about the period from 1946 or '7 to the time when you left the bank, and if there were any changes during that time please indicate and tell us when there would be any changes in position? A. Until the time I left the bank, my desk was right here (indicating).

Q. And that is where it says "Miller - B"? A. Yes.

Q. In other words, "Office space," right, over the words "office space"? A. That is right. Right in front of my desk—this is all out of scale, I mean where this has been drawn in.

Q. Would you tell us—you do it yourself now; will you indicate, giving the time and the place that (1031) was occupied by you and your desk, just ignoring for the moment what else maybe on there, if you agree with what is on there please so indicate, and if you don't, please make some other mark which would show where you say you were? A. My secretary was about there (indicating); my desk was about here (indicating).

The Court: You had better put something on there, some initial.

Q. Would you put your own secretary, put underneath that your initials J.W.M.? A. My desk was right behind here (indicating).

(1032) Q. Will you indicate where and show us about how far her desk was from your desk? A. I don't know exactly how to put it in by scale.

Q. Can you tell us, first, before you put it in, about how far was her desk from yours, giving us the number of feet? A. It couldn't have been more than about four. She sat at her desk and answered my phone and she would make out a memo of whoever was on the phone and she could turn right around and hand it over to my desk to me. So that is how close it was.

Q. Could she hand you the memo you referred to without leaving her seat? A. Yes. She just turned around in her swivel chair and handed it to me.

Q. So that your desk was further up, looking toward the top of the diagram, from the place where you marked "Secretary" and the initials "J.W.M." or "J.M."; is that right? A. Well, I didn't quite follow what you——

Q. I wanted to know first——

The Court: He marked a square near "office space" (1033) where he thinks his desk was.

Q. Put your initials under the square "Office space." A. (Witness writes.)

Q. You are not applying the scale that appears at the top? A. No.

Q. You have already told us how far her desk was from yours; is that right? A. Yes. She could swing around and hand me a memo.

Q. Will you tell us just about the space occupied, where it has been referred to, by the officers' platform? A. This space from here to here (indicating).

Q. When you say "this space" you are referring to all on the left-hand side of the place marked "railing 3 foot 7 inches high"; is that right? A. That's right.

Q. What is that? A. That is where the credit manager sat.

Q. Put the words "credit manager", please. A. (Witness writes.)

Q. Will you tell us where the other officers were that dealt with you in connection with loans? (1034) A. Well, these officers in the front here from this point up had nothing to do with loans.

Q. When you say, "From this point up," you are putting your hand from the place below where you marked the word "secretary"? A. That's right.

Q. Going down to the front part of the bank? A. That's right.

Q. What was the next closest desk to yours? Was the credit manager the next one to yours? A. Behind me, yes.

Q. Nothing between you and the credit manager? A. No.

Q. And going in the other direction was your secretary's desk? A. Right.

Q. Were signature cards available to people who asked for them? A. Yes.

Q. Were they only in your possession or in the possession of others, too, for distribution? A. Oh, I believe every desk on the platform, every officer, manager, chief clerk and secretary had a drawer where they kept for current working a few forms (1035) of every kind that were generally used in connection with opening accounts.

Q. And can you tell us whether or not there was any requirement that when a signature card, say, was returned to the bank or brought to the bank by a customer that the person who was opening a new account had to be present? A. No.

Q. What would happen, then, to a signature card which was brought in by a customer or a person who was going to become a customer or depositor of the bank? A. You mean when the signed signature card came in?

Q. For instance, could Mishel bring in signature cards without having the person appear with him who was opening an account? A. Yes.

Q. Can you tell us whether that occurred or not? A. Well, I don't remember it occurring personally with me, no.

Q. Can you tell us whether or not in cases where a new depositor was brought in by the method you just described, whether the person who in the first instance had brought in the depositor, whether such officer then thereafter received credit? A. Yes.

(1036). Q. Can you tell us whether or not you ever heard that Mishel was in the check cashing business? A. Not until he said it when he was sitting right here the other day.

Q. Did he ever submit any document in which he represented that he or a company or a corporation with which he was connected was in the check cashing business? A. He did not.

Q. Can you tell us whether or not there was a relationship between the amounts that a customer had to maintain on an average balance for a particular period as against the amount that a customer borrowed from the bank? A. In order for a customer to maintain his credit standing in the bank, he had to keep balances of at least 20 per cent of his borrowings.

Q. Can you tell us the amount of the average balances which Mr. Mishel maintained or his companies? A. Well, yes. I figured it up recently from the records of the bank. The first year he was in the bank the average balance for the year was $2700, for the second year his average balance was $7700 and the third year it was about $6200. That is within a hundred dollars.

Q. That would mean, then, that he could borrow (1037) when his average was $7700 five times $7700; that would be his top limit? A. Yes.

Q. And the same would be true of the other figures which you gave to us; right? A. Correct.

Q. Can you tell us whether or not the bank required that Mishel produce at such time as it desired or directed him to such documents which were the basis of the loan which the bank was making? For instance, if you say it was a loan on customers' notes, did it require that the customers' notes be submitted to the bank? A. Well, if he brought in a customer's note that was made to a corporation, he would have to have a resolution form filled out by the payee of that note. A note made to a corporation can't be negotiated just on the basis of somebody writing the name of the endorsement on the back. In addition to that, you have to have a form, a legal form, which gives someone authority to transfer that note to another party. So he had to have these resolution forms from time to time.

If he brought in a note and it was approved for discount, he would have to pick up a resolution form, take it out, have it executed, the seal of the corporation (1038) has to be affixed to it, it has to be signed by an officer of the corporation, attested to by the secretary, and we couldn't discount the note until such time as he had sent that resolution form back to the bank.

Q. Were there various types of agreements, like hypothecation agreements, that had to be submitted from time to time? A. There are all kinds of forms. I had a desk full of them to fit different occasions.

Q. That you had; you had the forms? A. Yes.

Q. Would those forms be available to Mr. Mishel in those instances where he had to supply them to the bank in connection with his loans? A. Yes.

Q. Did he have any personal loans? A. I don't recall this, but I learned from talking with other officers in the 38th Street office that he had a loan on a Cadillac automobile there. I didn't know anything about it at the time.

Q. You did not know that at the time, you say? A. No.

Q. You learned that later? A. Yes.

(1039) Q. Will you tell us whether or not personal loans were negotiated through the 38th Street office? A. Yes, they were at that time.

Q. That is on things like automobiles? A. At that time the Small Loan Department was at 38th Street.

Q. Mr. Mishel testified that a number of accounts were opened which he referred to as stiff accounts, and he also testified that in these accounts which were opened from $150,000 to $200,000 a month was deposited every month. Do you remember his testimony? A. Yes, I remember him saying that.

Q. Is that the fact? A. It is not a fact.

Q. Did you know that these accounts were so-called stiff accounts? A. I did not. As a matter of fact, I never heard the expression "stiff accounts" until a couple of months ago in this investigation.

Q. Do you recall that he testified there was a stiff account in the name of Williams? Yes, I remember his testimony.

Q. And one in the name of Sam Marco? A. Yes.

(1040) Q. One in the name of Newman? A. Yes.

Q One in the name of Young? A. Yes.

Q. One in the name of Case? A. Yes.

Q. And one in the name of Feinman? A. Yes.

Q. And then do you remember he gave some other names and he then later said he was not certain that they were in the Pennsylvania Exchange Bank; do you recall that? A. Yes.

Q. Those that I mentioned, those that he said were in the bank, can you tell us how much in all was deposited in those accounts? A. Well, I went——

Q. Give us the amount. Don't tell us what you did. A. $128,448.

Q. Did you, at my direction, get that information from the records? A. I did.

Q. Can you tell us whether that covers the period from July, 1948, to May, 1950? (1041) A. It does.

Q. And can you tell us whether or not in that twenty-two months or so that is the total of all the deposits in all those accounts? A. It was.

Q. Can you tell us about what the average would be for those accounts for those months? A. Well, if you divide it by 22, it is about $6,000 a month.

Q. Did you find any account that had $200,000 deposited in it in one month or $150,000 deposited in it in one month? A. $128,000 was the total for the two years.

Q. For all those accounts? A. For all those accounts.

Mr. Rosenblum: May we stop at this point?

The Court: We will recess now until 10.30, Monday. Don't discuss the case.

(Adjourned to Monday, October 29, 1956, at 10.30 o'clock a. m.)

(1042)

New York, October 29, 1956;
10.30 o'clock a.m.

Trial resumed.

(Jury in box.)

The Court: Good morning. I am sorry for the delay. I had to terminate another case, and the same thing will happen tomorrow morning. So if I forget to tell you, there is no reason to get in before 10.45, because I have to finish up the end of another case tomorrow morning, too.

All right, Mr. Rosenblum, I think we can go ahead.

Also for your planning, we have to end at 4 o'clock this afternoon, which I may forget later, but I hope not to. There is a judges' meeting.

JAMES W. MILLER resumed.

Direct examination resumed by Mr. Rosenblum:

Q. Mr. Miller, do you recall Mr. Mishel testifying that sometime in or about 1946, '47 or '48 he described what he said was a meeting that took (1043) place, at which time he was talking with Mr. Gallagher and you came into the room, and he testified that at that time Mr. Gallagher—I will give you the substance of it—said to you, "You may or you can do anything you wish to with Mr. Mishel. I know his people and you can undertake anything whether it be legal or illegal"?

Do you recall his testimony? A. I recall his testimony.

Q. Will you tell us, please, whether or not such a meeting and such an occurrence ever took place? A. No such meeting ever took place.

Q. Thereafter he testified concerning illegal acts which he claimed when he participated in in connection with occurrences at the bank.

Were you ever a partner of Mishel? A. No, sir.

Q. Were you ever a partner of Mishel and Gallagher? A. No, sir.

Q. He also testified at a later time that in fact even though he fixed this date of the meeting with Gallagher that I described before and you and Mishel, that at a time before that meeting there was (1044) an occasion when he had an illegal transaction with you.

Did that ever occur? A. No, sir.

Q. I think that is the one that he referred to as "burnt money."

Do you remember his testimony as to that? A. Yes, I remember his testimony.

Q. And I believe in substance he said that he had paid you 10 per cent for your part in assisting him in putting burnt money through the bank.

Did that ever occur? A. No.

(1045) Q. Did he bring burned money into the bank? A. Well, not to my knowledge; but I heard from one of the fellows at the bank the other day——

Q. Who was that A. Mr. Brennan.

Q. Mr. Brennan? A. Yes. That there had been an occasion when he brought some burned money into the bank.

Q. What happened with the money? A. He couldn't fix the time. He took it to the teller and the teller took out money that was negotiable that could be sent down to one of our depositaries and gave him good money for it.

Q. Now do you recall, Mr. Miller, his testimony, and I don't want to go into it because I think it is quite clear at the moment, with reference to the so-called stiff accounts? A. Yes, I remember it.

Q. I think I asked you, but I will ask you again, did you ever have any talk with Mr. Mishel with reference to the opening of the stiff accounts? A. Never at any time.

Q. Do you recall that he testified that they included accounts in the name of Williams, Marco, (1046) Newman, Young, Case, Feinman, and then Katz and Whitman, and he later said that he wasn't certain that Katz and Whitman were at the Pennsylvania Exchange Bank? A. I recall the testimony.

Q. Can you tell us for how long a time the Williams account was opened at the bank? A. It was opened for one month, July 1948.

Q. And how much was deposited in that account during the entire month? A. $10,000.

Q. Can you tell us, please, in connection with the Newman account when it was opened and for how many months it was active? A. It was open for four months, from May to August 1949, and there was $1000 deposited in May and $200 in June, a total of $1200.

Q. Now in connection with the Marco account, will you tell us, please, give us the same information you gave us as to the others? A. That account was opened for ten months, from December 1948 until September 1949. The deposits by months were: December $200. January 1949 $420. February $360. March $10,505. April $500. (1047) May $1070. June $900. July $12,287. August $2542. September $1464. Total of $30,248. for the ten months.

Q. Take, please, the Case account. A. That account was opened for four months beginning with June 1949 and terminating in September 1949. June there was $22,000 deposited in the account. July 8000. August 15,000. September $500. A total of $45,500 for the four months.

Q. I asked you about the Newman account. A. Yes, you asked me about that. You didn't ask about the Young and the Feinman accounts.

Q. Young and Feinman. Give us the Young account. A. The Young account was opened in June 1949; it was active for four months. There is nothing in September of that year. Deposits for June were $21,000. July 6000. August 15,000. No deposits in September.

Q. You said four months. I think you mean three months it was active? A. It was active for three months.

Q. You said it was opened for four months? A. But there were no deposits in the last month.

(1048) Q. And the Feinman account? A. The Feinman account was opened in April 1950 and was opened for two months. $900 was deposited in the account in April. Nothing was deposited in May. Total of $900 went through the account.

Q. Was there any Katz account at the Pennsylvania Exchange Bank that you have been able to find? A. No. I asked and they had no record of any Katz account.

Q. How about Whitman? A. I asked them and they said they had no record of such an account.

Q. Can you tell us whether the grand total of deposits is $129,848? A. That is right.

Q. I think you said on Friday it was 128,000? A. I said 128,448.

Q. This is the correct figure that you gave us this morning? A. 129,848.

Q. Now in connection with these accounts that you have just testified about, tell me how many months in all were these accounts open, a total of how many (1049) months? A. They were open and in existence for a total of 25 months.

Q. How many months were they active? A. 21 months.

Q. According to Mr. Mishel, he said that you were the one who determined when an account should be closed and another one opened. Did you ever say anything like that? A. There was never any talk of that. It was all just fiction.

Q. He also said that you received—that in these accounts from 150 to 200,000 dollars a month was deposited in these stiff accounts as he described it. Is it correct that the active months total 21 months out of the 25? A. That is correct.

Q. Did you ever receive $150 a month in connection with these so-called stiff accounts? A. I did not.

Q. Did you receive a single penny from Mishel or from anyone else? A. No, nor from anyone else.

Q. Now let us get to the Chernoff matter, Mr. (1050) Miller. I think the testimony is that the first letter you received from the Treasury Department was on July 19, 1950. A. That is the first notice that we had in connection with the Chernoff matter.

Mr. Rosenblum: May the clerk meanwhile mark these documents separately, please?

The Court: Yes.

Q. I show you Government's Exhibit 20 for identification and ask you whether that is the first communication that you received from the Government in connection with the cashing of the Chernoff bonds? A. It is.

Q. And did that have with it some other papers? A. Yes.

Q. What were they, please? A. There were photographs of a number of the bonds, and I believe there was a schedule attached also.

Q. Would the schedule be these two documents which I have before you, 20-A and 20-B, each in evidence, Government's exhibits? A. Yes.

Q. Now, tell us what you did after you received (1051) that communication from the Government. A. This letter, according to the time stamp of the bank on it, was received on July 21.

Q. Is that what you were looking for on the back? A. Yes.

Q. July 21, 1950? A. 1950. When I received this, I turned it over to the head teller, Mr. Wilmot, and told him to check into it. He reported back I don't recall whether it was the same day or a few days later, but he reported back that he wasn't able to get any information from anybody in the bank or the records that would indicate how these were cashed.

Q. What did you do with the bonds, that is, the photostat or the photograph of the bonds? A. They were all attached together. I gave him everything that was received.

Q. Did he then return the letter together with the two schedules and the photostat or photograph——

Mr. Rosenblum: Mr. Hallinan, do you know were they photographs or photostats? Do you recall?

Mr. Hallinan: I have never seen them, Mr. Rosenblum.

(1052) Mr. Rosenblum: All right, either photographs or photostats.

Q. What did you do with those bonds which were enclosed, that is, the photograph or photostat of bonds which were enclosed and came with the letter of July 19, 1950? A. They were all kept together until a couple of years later, when we sent them to our bonding company.

Q. Will you tell us, please, what you did after receiving the letter and after receiving the report from Wilmot that you told us about; what is the next thing you did in connection with the Chernoff bonds? A. I didn't do anything because the letter put us on notice that Secret Service men would call at the bank.

Q. Did you communicate with your bonding company? A. Oh, yes, I sent a letter to the bonding company advising them of this letter from the Fiscal Service.

Q. Was that a company that had bonded the bank for some period of time prior to this? A. I don't recall how many years but it was Lloyds (1053) of London.

(Defendant's Exhibits P through Z marked for identification.)

(Defendant's Exhibits AA through AE marked for identification.)

Q. I show you Defendant's Exhibit AE for identification and ask you whether that is a letter you sent to the bonding company? A. No, this is the letter from the bonding company acknowledging my letter.

Q. You had sent a letter? A. I sent a letter.

Q. And this is the acknowledgement you received from the bonding company? A. This is a letter dated August 9, 1950, and says:

"We acknowledge herewith report of loss" and so forth.

Q. And is this the letter which you received from the bonding company? A. Well, this is from their agents here, Toplis & Harding, who are agents for Lloyds of London.

Q. Can you tell us, please, whether or not you thereafter received a letter from the Treasury Department, (1054) Fiscal Service, signed by Mr. Bartelt with reference to the Chernoff bonds, the letter being dated November 16, 1951, or would you rather I show it to you first? A. I know we received such a letter, yes.

Q. I hand you documents so far marked by the clerk and ask you to look through these papers and see if you can select for us the letter you just referred to? A. It doesn't seem to be in this group.

(Defendant's Exhibits AF through AL, inclusive, marked for identification.)

Q. Will you look through these others, please.

You say you know you received such a letter; is that right? A. Yes.

(Defendant's Exhibits AM through AT, inclusive, marked for identification.)

Q. Look through these meanwhile (handing to witness).

(Defendant's Exhibits AU and AV marked for identification.)

Q. I now hand you AU and AV for identification and direct your attention to AV for identification (1055) and ask you whether that is the letter you just referred to? A. This is the letter, yes, dated November 16, 1951.

Q. Was that in connection with the Chernoff bonds, the cashing of the Chernoff bonds? A. It was.

Q. Was the letter sent to you as president of the Pennsylvania Exchange Bank? A. It was.

Mr. Rosenblum: I offer this letter in evidence.

Mr. Hallinan: I am sure I will have no objection. I just want to check and make sure it is the right letter I had in mind.

No, no objection, your Honor.

The Court: Received.

(Defendant's Exhibit AV for identification received in evidence.)

(Defendant's Exhibits AW to BA marked for identification.)

Q. Mr. Miller, will you meanwhile look through those papers and see if you find a document marked for identification dated November 29, 1951. (1055a) A. I find a copy of a memo that I wrote to the bank's attorney.

Q. Just keep that out.

Mr. Rosenblum: May I read it to the jury, your Honor?

The Court: Yes.

(Mr. Rosenblum reads Defendant's Exhibit AV to the jury.)

(1056) Mr. Rosenblum: I am not reading the letter of July 19, 1950. I think it has been read to you. But I will check the record.

(Mr. Rosenblum continues reading Exhibit AV.)

Q. Now, do you see the first letter here——

Mr. Rosenblum: May I just direct—not read the letter, as I think it has been read before, but just direct the jury's attention to some portions of it.

(Mr. Rosenblum reads from Government's Exhibit 20.)

Q. Now, Mr. Miller, after receiving the letter which is AV in evidence from the Treasury Department which I just read to the jurors, before this last part that I read from the letter dated July 19, 1950, after receiving the letter of November 16, 1951, will you tell us whether or not you communicated with the attorneys for the bank? A. I believe I did, yes.

Q. Will you see whether or not from the files of the bank you have a memorandum covering your communication with the attorneys for the bank? A. On November 29, 1951, I sent a memorandum to Mr. Levy, who was the attorney for the bank.

Q. Can you give us the number of the exhibit (1057) for identification? Is that AU for identification? A. AU for identification.

Mr. Rosenblum: I offer AU for identification in evidence.

Mr. Hallinan: I will object to this on the ground that it is a self-serving declaration, your Honor, also on the grounds of relevancy.

Mr. Rosenblum: May I ask one question.

Q. Did this have to do with the cashing of the Chernoff bonds? A. It did.

The Court: I will sustain the objection.

Mr. Rosenblum: Exception.

Q. Can you tell us whether or not on or about the time you communicated with the bonding company, that is, November 29, 1951? A. I believe I did.

Q. Now, I read to the jury the letter dated November 16, 1951, which is AV in evidence and I ask you whether or not you sent a copy of that letter to the bonding company? And I direct your attention to see whether or not you have a letter of November 29, 1951, among the papers marked for identification addressed to Toplis & Harding. (1058) A. November 29, 1951, a letter by me to Toplis & Harding, with a copy to our insurance broker and to our attorneys.

Q. What identification number is that? A. AR.

Mr. Rosenblum: I offer AR for identification in evidence.

Mr. Hallinan: I have no objection to this.

(Defendant's Exhibit AR for identification received in evidence.)

Mr. Rosenblum: May I read it to the jurors?

The Court: Yes.

Mr. Rosenblum: I am not following the practice of sending it around.

(Mr. Rosenblum read Defendant's Exhibit AR to the jurors.)

Q. Mr. Miller, what company is R. A. E. Herbhold and Company? A. They are the brokers who handled the insurance for the bank.

Q. And Toplis, Harding, Inc.? A. They are the adjustment agents for Lloyds of London who had the bankers blanket bond on the bank.

Q. I direct your attention first to one of the exhibits dated December 6, 1951, from Dorff & Levy. (1059) See if you can find that.

if you find that. A. I find a letter here from Dorff & Levy dated December 6, 1951.

Q. Will you tell us whether that concerned itself with the Chernoff matter? A. It does.

Q. Was that signed by I. A. Levy, a member of the firm? A. Yes.

Q. Was he the active member of the firm that represented the Pennsylvania Exchange Bank? A. He was.

Q. Was this addressed to you, to your attention addressed to the Pennsylvania Exchange Bank to your attention in re Chernoff? A. Correct.

Mr. Rosenblum: I offer AQ for identification in evidence.

Mr. Hallinan: I have no objection to this document going into evidence. (To Mr. Rosenblum) Would you just come up here a moment, please?

(The following proceedings took place at the bench out of the hearing of the jury.)

Mr. Hallinan: Defendant's Exhibit AQ I have no (1060) objection to this document going into evidence, but I do not waive the objection I made previously to Defendant's Exhibit AU which is referred to in this particular letter. And if Mr. Rosenblum has any thought in the back of his mind that this can then go in to complete this (indicating)——

Mr. Rosenblum: I was not thinking of that at all.

Mr. Hallinan: All right. I have no objection.

Mr. Rosenblum: I don't know what position I may take in the future and urge to your Honor, but at this time I don't have in mind to say——

Mr. Hallinan: I just want to make it absolutely clear for the record that I do not waive getting this into evidence by not objecting to this particu-

lar document. This (indicating) refers to this (indicating).

Mr. Rosenblum: If at a future time I renew my offer I will do it out of the presence of the jury.

The Court: It refers primarily to a telephone conversation anyhow.

Mr. Hallinan: Yes.

The Court: All right. We will receive it.

(The following took place in the hearing of the jury.)

Mr. Rosenblum: Will you mark this, please?

(1061) (Defendant's Exhibit AQ for identification received in evidence.)

Mr. Rosenblum: May I read it to the jury?

(Mr. Rosenblum reads Defendant's Exhibit AQ to the jury.)

The Court: We will take our mid morning recess now, and during the recess will you get your papers in shape so we can go ahead without delay.

Don't discuss the case.

(Recess)

(Jury in box.)

The Court: All right, Mr. Rosenblum.

By Mr. Rosenblum:

Q. Mr. Miller, there are in evidence now the documents which have dates July 19, 1950, and then the next one is November 16, and then another one November 29 and one of December 6.

Will you go back with me, please, for a few minutes and tell us whether or not after the letter of July 19, 1950, was received in which there is a reference to a fact that a secret service agent will come to the bank to make an in-

vestigation, will you tell us whether an agent did come to the bank? A. Yes, sometime in August. I can't fix the date, but Mr. Sershin fixed the date, I think, as August 8, 1950.

(1062) Q. 9th, I think he said. A. 9th?

Q. My recollection is, and I think I will be corrected, he said he was there on the 3d first. Did he see you on the 3d? A. He didn't see me, no.

Q. I believe the next time—A. He came in one time in August and saw me.

Q. I think his testimony is he came in on October 3, 1950, and then on August 6, 1950.

The Court: October or August?

Mr. Hallinan: The first time was August 9. The first time he saw Mr. Miller was August 9.

Q. His testimony is that he came in to see you or came to the bank and saw you on August 9, 1950. Do you recall whether that is the date, or approximately—A. I don't recall the date but I know he came sometime in August.

Q. Was that about that time? A. I would say yes.

Q. Will you tell us, please, just what occurred when Mr. Sershin came to the bank and saw you? A. Well, his conversation with me and contact with me at that time was very slight and very brief. (1063) I can't remember any words that he said, but I told him——

Q. Well, can you give us the substance of what he said? A. He said he was there checking on the Chernoff transaction. And I told him that Mr. Brennan, who was the manager, would make available all of the records and all of the facilities and the assistance of everybody in the bank. That was about the extent of his conversation with me. It only lasted as I recall a period of a few minutes.

Q. After that visit by Mr. Sershen on August 9th, 1950, will you tell us whether or not you saw Sershen again

after that time? A. I saw him once more and that was the last time that I had—I ever saw him until I saw him here in the witness box.

Q. In other words, would you say that you saw him on two occasions? A. Two occasions, yes.

Q. Can you fix the date or the approximate date when you saw him for the second time? A. I can't fix the date exactly.

Q. Can you fix the approximate date? (1064) A. Sometime before the middle of October, yes.

Q. Will you tell us what happened, what occurred at that time when you saw him on the second occasion? A. He came to my desk, and he had a picture, a small picture, of Mr. Mishel and he asked me if I knew Mr. Mishel.

Q. When you say small, you sort of indicated with your fingers. A. It was about the size of a passport picture. And he asked me if I knew Mr. Mishel. I told him yes, that he had been a customer in the bank that had gone bad.

He said, "Did Mr. Mishel ever cash any E Bonds in the bank?"

I said, "Yes, I believe he did, on a couple of occasions."

He said, "Do you know whether he had anything to do with these Chernoff bonds?"

And I told him that I had never connected him up with the Chernoff bonds.

And he said, "Well, we know he did." He says, "Is there any way you think we can tie him up?"

(1065) So we went through my day book and matched up a date of one of these cashings with a notation in my day book which indicated that Mr. Mishel had been there on one of those dates. I said I don't remember exactly what the name of the bond was. But he said, "Well, we know it is"——

Q. Keep your voice up. A. "He is mixed up in this thing, and this is the same date."

He says, "It must have been him."

So he said, "Can you remember what happened at that time?"

I said, "Well, I will tell you as much as I can remember; that Mishel brought a man into the bank to my desk and told me that this man was—as a matter of fact, he had bonds. He said that this man wanted to cash these bonds and that he was either m nager or someone that worked over in Roth's Restaurant and had been there for some years," he said.

I asked the man, "Is this you? Are these your bonds?"

He said, "Yes."

I called—I signalled for the guard, got the guard over, took the bonds over and cashed them.

(1066) Sershen said, "That fits, we have got Mishel. He admitted that this is his job and that he brought a stooge into the bank and passed him over as the owner."

So I said to him, I said, "Well, where does that put the bank?"

He said, "The bank is in the clear; you got identification from a customer."

He says, "That is what the regulations provide."

So I said, "Do you think we will be stuck?"

He said, "No, there won't be any claim made." He said——

Q. I can't hear you. A little more slowly, and keep your voice up. A. He said, "How about any other time that he was in with bonds?"

I said, "Well, there was another time," I said, "but I don't recall whether on that occasion they were his own bonds, his family's bonds, somebody else's bonds."

He said, "Well, did he have the other man with him?"

I said, "I don't remember the other man being (1067) with him on any other occasion."

He said, "Well, we can't find this other man that he brought in." He said, "Do you think that you could help us remember what he looked like?"

So I gave him a description. And he said, "Well, I don't think that would be very helpful." He said, "We will get in touch with you if we want a statement or need any other information from you."

Q. Would you keep your voice up? A. Sorry.

Q. Go ahead. A. He left.

Q. He said what at the end? A. He said he would be in touch with us if he needed anything further from us.

Q. Was that the first time that you learned that Mr. Mishel had been arrested? A. Yes.

Q. You say it was some day prior to the middle of October 1950? A. Yes.

Q. Do you recall whether Mr. Sershen was accompanied by another man? (1068) A. Well, if he was, he didn't say anything, and he didn't take part in any conversation. I saw the man that was here; I don't recall him.

Q. The man who was here is a man by the name of Sweeney? A. Yes. I don't recall.

Q. You can't say either way as to whether he was or wasn't there? A. He could have been, but I certainly don't remember him talking about the thing at all.

Q. So that we may get our sequence, Mr. Miller, was it thereafter that the letter which I read to the jurors, which is AV in evidence, dated November 16, 1951, that you received from the Treasury Department? A. Yes. We heard nothing for a year until this letter was received.

Q. For a year? Oh, that you say was October 1950? A. 1950.

Q. And the next letter you said you received was November 16, 1951? A. Correct.

Q. You say during that year you heard nothing whatever from anyone?

(1069) Mr. Hallinan: That is what he said, Mr. Rosenblum. I will object to the——

The Court: I don't think you need repeat it.
Mr. Rosenblum: All right.

Q. Thereafter did you write the other letters which are in evidence now, the ones which are marked AR and AQ, that is— A. After November 16, 1951, yes.

Q. Now, Mr. Mishel testified that in October 1950, after he was arrested, and I hesitate to suggest the date, but he said it was in October 1950, and the record will show the date, that he communicated with you and then met you at what he thought was the Holland House, at which time he claimed he had a conversation to the effect that he informed you that he had been arrested and that you in substance said to him, "You hold up your end, and I will hold up my end. Don't worry about it." Do you recall his testimony in that regard? A. I recall his testimony, yes; but nothing like that ever happened. I never saw Mr. Mishel anytime in my life outside of the bank, at no time.

Q. Can you possibly— (1070) A. I saw—wait a minute. I saw him in June or July of 1950 for the last time as far as he was transacting any business in the bank; the next time I saw him was in May of 1951, when he was brought into the bank in handcuffs I believe by sheriffs or marshals or somebody looking for this non-existent safe deposit box.

Mr. Hallinan: I move to strike this, your Honor, on the ground it is irrelevant.

The Court: I will strike it.

Mr. Rosenblum: I think it should stand. I take exception to your striking this last bit of testimony.

The Court: I will strike the part of his testimony dealing with when he next saw Mishel after July 1950.

Mr. Rosenblum: Exception.

Q. Do you recall whether or not Mr. Mishel ever had a box in the bank under the name of Robert Benson?

Mr. Hallinan: I will object to this, your Honor.
The Court: Sustained.
Mr. Rosenblum: Exception.

(1071) Q. Mr. Mishel has testified that you and Gallagher and he were partners and had moneys and other things in a safe deposit box at the Pennsylvania Exchange Bank. Is that true? A. That is absolutely untr

Q. Did you start with the Pennsylvania Exchange Bank from its inception, from the time it opened? A. No, the bank was opened in 1920 and I went there in 1930.

Q. And from 1930 up to the time when you resigned in 1954, were you continuously with the bank, that is, the Pennsylvania Exchange Bank, at the 48th Street branch? A. Well, no. Part of the time I was at 26th Street.

Q. When did you go to the 48th Street branch? A. 1946.

Q. When was the bank opened at 48th Street? A. 1946.

Q. So you were with the bank at 48th Street during the entire time from the moment it opened? A. Oh, yes.

Q. When I said "inception" I did not mean inception of the bank itself but the time this particular (1072) branch was opened. A. Yes.

Q. Was there ever a safe deposit box removed from that bank at any time while you were with the bank from 1946 up to the time when you left in 1954?

Mr. Hallinan: I will object to this and ask the Court to instruct Mr. Rosenblum not to ask any other questions along this line. There have been five put after your Honor's ruling on this matter.

The Court: I will sustain the objection, and I will tell Mr. Rosenblum we are not going off into the question he is inquiring about.

Mr. Rosenblum: Exception.

Q. Now, Mr. Miller, the last letter in evidence is dated December 6, 1951, from Dorff & Levy to the Pennsylvania Exchange Bank.

I ask you whether or not after that date you wrote a letter to Mr. Bartelt in connection with the Chernoff transaction? A. I didn't quite follow the date, Mr. Rosenblum.

Q. After the date of the last letter which is December 6, 1951—I direct your attention to 22 in evidence—(1073) A. Yes, I wrote a letter——

Q. —and which I believe has been referred to as the basis of the first count in this indictment, and I ask you whether or not you sent that letter? A. Yes, I sent this letter dated December 26, 1951.

Q. And specifically, was this after the date when you say Sershen told you the bank was in the clear? A. It was over a year later.

Mr. Rosenblum: May I, your Honor, at this time, although this letter has been read, read it again? It is the basis of the first count.

The Court: All right.

(Mr. Rosenblum read Government's Exhibit 22 to the jury.)

Q. Thereafter, did you receive, that is, did the bank or you, as president of the bank, receive a letter from the Treasury Department dated December 27, 1951? A. Yes, we did.

Q. Your letter was dated December 26, 1951, and addressed to the Fiscal Service in Washington, and the

other letter I have just referred to, did (1074) that come from Chicago? A. It came from Chicago.

Q. That is dated the 27th of December 1951, one day after your letter was dated that you sent out.

Mr. Rosenblum: I offer this letter which is AP for identification in evidence.

Mr. Hallinan: I will object. I think it is irrelevant, your Honor.

The Court: I will sustain the objection.

Mr. Rosenblum: Exception. May I give your Honor the reason on the record?

The Court: Sure.

(The following proceedings took place at the bench, not in the hearing of the jury.)

Mr. Rosenblum: The purpose in offering this letter is to show that there was a continuous set of steps taken by both parties, that is, the Treasury Department and the Pennsylvania Exchange Bank, wherein they were contending with each other as to whether or not they should or should not pay this money. So that, as you might say in a matter of litigation at times, it appears the steps taken were to establish whether or not these letters, being written in furtherance of, on the one hand, a claim by the (1075) bank that it is not liable for the cashing because it was not negligent, and secondly, the Government's assertion that it was.

Mr. Hallinan: I will agree to everything he says except the inference. It is a non sequitur. I will agree there was correspondence back and forth, but it has nothing to do with this particular item coming from the Treasury Department. It has nothing to do.

Mr. Rosenblum: It would be for the jury to decide.

The Court: I do not think this will help the jury in the least bit, and I will sustain the objection.

Mr. Rosenblum: Exception.

(Proceedings were resumed within the hearing of the jury as follows.)

By Mr. Rosenblum:

Q. Mr. Miller, can you tell us whether you thereafter received a further communication from the Treasury Department in Washington? A. Yes, we received another letter.

Q. Will you tell us whether that was in February 1952? A. February 5, 1952.

(1076) Q. Do you have that among the papers marked for identification? A. Yes.

Mr. Rosenblum: I offer AL for identification in evidence.

Mr. Hallinan: I have no objection to this, Mr. Rosenblum.

(Defendant's Exhibit AL for identification received in evidence.)

Mr. Rosenblum: May I read it to the jury?

The Court: Yes.

(Mr. Rosenblum reads Defendant's Exhibit AL to the jury.)

Q. Now tell us, Mr. Miller, did you then communicate with the Government or, did the Government thereafter communicate with you? A. Well, we got another letter

from the Government that followed very closely on to that one.

Q. This letter came from Washington? A. We got another one from Chicago.

Q. And will you give me that one, please, if you have it in the group of papers marked for identification? A. It is dated March 11, 1952 (handing to Mr. Rosenblum).

(1077) Mr. Rosenblum: That is AK for identification. I offer AK for identification in evidence.

Mr. Hallinan: No objection, your Honor.

(Defendant's Exhibit AK for identification received in evidence.)

Mr. Rosenblum: May I read it to the jury?

The Court: Yes.

(Mr. Rosenblum reads Defendant's Exhibit AK to the jury.)

Q. Now, thereafter will you tell us whether you made some communication after receiving that letter, that is, you on behalf of the bank? A. Well, I sent the two letters that we have just read to our attorneys, the attorneys for the bank.

Q. And those are the two letters that are AK and AL in evidence? A. Those are the two letters.

Q. And to whose attention did you send them? A. To Mr. Levy.

Q. And did you send your letter covering it with it? A. Yes, I had a covering letter, two pages (1078) (handing to Mr. Rosenblum).

Mr. Rosenblum: I offer AM, which is the first page, and AN, which is the second page, each marked for identification, in evidence.

Mr. Hallinan: I will object to this on the grounds of relevancy, and it is a self-serving declaration, your Honor.

The Court: I think I will sustain the objection.

Mr. Rosenblum: May I state upon the record my basis for the offer?

The Court: All right.

(The following proceedings took place at the bench, not in the hearing of the jury.)

Mr. Rosenblum: Your Honor undoubtedly knows there is a third count in this indictment which is predicated upon a letter written by Mr. Levy which the Government claims was written by him at the direction of Mr. Miller as president of the Pennsylvania Exchange Bank.

It concerns itself with the same subject matter which is within the letter which I have just offered in evidence, the Chernoff bonds, and my purpose in this entire offer is to show the steps (1079) taken and particularly in this instance, since Mr. Levy later wrote a letter which the Government claims is false and for which it claims the defendant is responsible, I want to show what was made available to Mr. Miller at all times, all the facts, so that it will be given such consideration by the jury as it may deserve in determining whether he is liable under the third count; and of course it is offered for the other counts, too.

I particularly bring to your attention that there is a third count upon which this is predicated.

Mr. Hallinan: I think this document contains other statements which are self-serving, and the fact, if he wants to establish it step by step, it is the fact he is interested in. This can be established

by saying: "Did you write a letter?", which is alrea'y in the record.

The other material—most of the material in this letter, as a matter of fact, is purely self-serving.

The Court: You just want the last paragraph?

Mr. Rosenbium: No, I want the entire letter. May I look at it?

(1080) The Court: Yes.

(Mr. Rosenblum examines document.)

Mr. Rosenblum: I want the entire letter. Frankly, I think it is all part of the one picture and it is certainly material as to the third count. If you were saying that Levy was in cahoots, he ought to be a defendant with this defendant. If you say he was just doing these things at the direction——

The Court: Do you want anything left out more than the second sentence of the first paragraph, Mr. Hallinan?

Mr. Hallinan: I think the third sentence is a self-serving declaration, too. They have been proving that in another way.

(Discussion off the record.)

The Court: If you wanted the first sentence——

Mr. Rosenblum: You mean the first paragraph?

The Court: No. The second sentence in the first paragraph is out under any circumstances. If you want the last two paragraphs plus the first sentence, why, all right, but just to show continuity. Actually I do not think you need it.

Mr. Rosenblum: You mean the first sentence, we will skip that and then all that is out (indicating)?

(1081) The Court: Yes.

Mr. Rosenblum: And then from here on (indicating)?

The Court: Yes. The self-serving portion of it is out.

Mr. Rosenblum: I will state on the record that I want it all and I will take an exception to your not giving me all, but I will read to the jury the part which you permit me to read.

The Court: All right.

Mr. Hallinan: I have a problem where an exhibit was handled in this manner and then the exhibit was sent in inadvertently to the jury.

The Court: You can have a photostat made with the portion deleted and then substitute that for the original.

Mr. Hallinan: I will have it typewritten so it will be easier.

Mr. Rosenblum: Indicating you are skipping something?

Mr. Hallinan: Yes.

(1082) (The following proceedings took place in the hearing of the jury.)

Mr. Hallinan: I think I had better not mark that.

The Court: It is perfectly clear what I have received in evidence and you can read that portion now.

Mr. Rosenblum: I am just going to read that portion that your Honor indicated I could read.

The Court: This letter is not going before you in full. The first sentence and paragraphs 3 and 4.

(Mr. Rosenblum read portions of Defendant's Exhibits AM and AN.)

By Mr. Rosenblum:

Q. Do you also have a letter dated April 4, 1952 in among the papers which I gave you, addressed by you to the Treasury Department? A. I do.

Mr. Rosenblum: If your Honor please, this is a letter in evidence and it is the basis of the second count. May I be permitted to read it?

The Court: Do you want to read it again?

Mr. Rosenblum: Yes, so that I can have my (1083) continuity.

The Court: What is the exhibit number?

Mr. Rosenblum: It is Exhibit 23 in evidence.

The Court: All right.

(Mr. Rosenblum reads Government's Exhibit 23 to the jury.)

Q. Did you thereafter, Mr. Miller, send a further communication to Toplis & Harding, the bonding people? A. On April 4, 1952, I wrote to them enclosing a copy of the letter you just read.

Q. Will you give me that letter, please? A. (Witness hands.)

Mr. Rosenblum: I offer AJ for identification in evidence.

Mr. Hallinan: I object to AJ on the grounds of relevancy, your Honor.

Mr. Rosenblum: Also, at the same time, I ask that 26 which is in evidence and which I just read but has a different number, which is a copy which—

Mr. Hallinan. You offer this in connection with it?

Mr. Rosenblum: Yes. It was referred in——

Mr. Halliran: The same objection. The (1084) original of that is in evidence. 26.

The Court: Well, I think I will receive AJ. There was an earlier letter of the same nature which we took and I am not sure we should have, but I don't see any harm in it.

(Defendant's Exhibit AJ for identification received in evidence.)

(Mr. Rosenblum reads Defendant's Exhibit AJ to the jury.)

Mr. Rosenblum: And I am not going to read 26 because it is just exactly——

The Court: I don't think you need that. Do you really need 26?

Mr. Rosenblum: I say, I am not going to read it. It is the same as the letter I just read before this last one. It is a copy of it.

The Court: All right.

By Mr. Rosenblum:

Q. Do you have an interoffice communication of the Pennsylvania Exchange Bank dated April 16, 1952 among the papers which have been marked for identification? A. Yes. It is a memo to the file.

Q. Can you tell us whether or not that memorandum (1085) was made in the regular course of the business of the Pennsylvania Exchange Bank and whether it was the business of the bank to maintain and retain such documents?

Mr. Hallinan: Your Honor, so we can save time, I will agree to that, that all these are, without going into materiality or relevancy.

The Court: All right.

Mr. Rosenblum: I offer AH for identification.

Mr. Hallinan: I object to this on the ground of relevancy, if your Honor please.

The Court: All right. I will sustain it.

Mr. Rosenblum: Exception.

Q. Thereafter did you communicate again with your attorney? A. Yes. On April 18, 1952.

Q. Do you have a copy of the letter or correspondence or whatever it was you sent to him? A. Yes (handing).

Q. And is it this document which is AG for identification? A. It is.

Mr. Rosenblum: I offer AG for identification in evidence.

(1086) Mr. Hallinan: I object to this on the grounds that I just objected to the last document. It is the large paragraph I really object to, your Honor. The fact of its being sent I don't object to.

The Court: I will sustain the objection. If you want the first and last paragraph you are welcome to it; if you think that they don't help, we will leave this out.

Mr. Rosenblum: I except to your Honor's ruling as to the other paragraph.

The Court: And paragraphs 1 and 3 are received then.

Mr. Rosenblum: Of AG for identification.

The Court: Yes.

Mr. Rosenblum: AG for identification—I am referring to "for identification," I assume the part that you are permitting to read is in and that Mr. Hallinan will make the same suitable arrangements and delete that part that your Honor has excluded.

The Court: Yes.

(Mr. Rosenblum read portions of Defendant's Exhibit AG to the jury.)

(1087) Q. Did you thereafter receive a memorandum from Dorff & Levy dated April 22, 1952 in connection with the Nat Chernoff matter? A. I did.

Q. Will you give that to me, please? A. (Witness hands.)

Q. You hand me AF for identification. A. Correct.

Mr. Rosenblum: I offer AF for identification in evidence.

Mr. Hallinan: I object to this on relevancy, your Honor.

The Court: All right. I will sustain the objection.

Mr. Rosenblum: Exception.

The Court: I think we will go to lunch now and then get back at 2 o'clock. Don't discuss the case.

(Recess to 2.00 p.m.)

(1088)

AFTERNOON SESSION

(Jury in box.)

JAMES W. MILLER resumed.

Direct examination continued by Mr. Rosenblum:

Q. I next show you AC for identification, Mr. Miller, and ask you whether or not you sent the original of that letter to Toplis & Harding? A. Yes, on April 30, 1952.

Mr. Rosenblum: I offer AC for identification in evidence.

Mr. Hallinan: It is irrelevant, your Honor. I object on that ground.

The Court: I will receive it.

(Defendant's Exhibit AC for identification received in evidence.)

(Mr. Rosenblum reads Defendant's Exhibit AC to the jury.)

By Mr. Rosenblum:

Q. Can you tell us, Mr. Miller, whether or not you took up the matter of a compromise at the suggestion of the bonding company?

Mr. Hallinan: I will object.

The Court: I will sustain the objection.

(1089) Mr. Rosenblum: Exception.

Q. The next document, Mr. Miller, that I show you is a letter of June 4, 1952, which is in evidence as Exhibit 24.

Mr. Rosenblum: If your Honor please, this is the basis of the third count.

The Court: Yes.

Q. I first ask you whether or not you received a copy of this letter from Dorff & Levy? A. I did.

Q. And I also ask you whether or not prior to the time that you received this letter or that this letter was sent to the Government, whether you had a conversation with Mr. Dorff of Dorff & Levy regarding the letter which had previously been prepared by Mr. Levy? A. I did.

(1090) Mr. Rosenblum: Now may I stand here, your Honor, so that I can follow these documents that I want to show him?

The Court: All right.

Q. Do you recall that when Mr. Dorff was examined there was brought to his attention Defendant's Exhibit 30 in evidence and Defendant's Exhibit 31 in evidence

as well as 29 in evidence, and do you recall that he was questioned with reference to a change which was made on the second page of the letter which had been sent over, according to Mr. Dorff, to you after it had been prepared by Mr. Levy? A. I do.

Q. Now I direct your attention to the fact that in Government's Exhibit 30 in evidence, the second page, this yellow sheet, reading, "And identified the person who cashed the bonds"—I withdraw that, please.

I will start the whole sentence.

"Incidentally, Mr. Miller testified before the grand jury regarding the theft of these bonds and identified the person who cashed the bonds as the one who claimed he was Mr. Chernoff and who was introduced (1091) to Mr. Miller as Mr. Chernoff by Mr. Mishel."

Do you recall the testimony that was given by Mr. Dorff in that regard? A. Yes, I do.

Q. Do you recall that on this same Exhibit 30 in evidence there appeared the pencilled words "And we have been informed that the person who cashed the bonds was subsequently indicted"? Now will you please tell this Court and this jury as to what your conversation was with Mr. Dorff by telephone with regard to the change that I just brought to your attention? A. I don't remember the exact word, but I called Mr. Dorff when I got this letter——

Q. When you say you got this letter, will you tell us just what you are referring to? A. I got the letter that Mr. Levy had prepared.

Q. All right. In the condition it was in, that was prepared by Mr. Levy, before your talk with Mr. Dorff? A. That is right.

Q. I understand that this would be then 29 in evidence. Take a look at it, please. A. Yes, that is the way it was when I originally (1092) received it.

Q. You are referring now to the exhibit I just last referred to as 29 in evidence? A. Yes.

Q. Will you please continue? A. I called Mr. Dorff on the telephone and pointed out to him that the phrase in there that stated exactly what I had testified before the grand jury and I thought that that was not a proper thing to put in a letter.

Q. Did you say that to Mr. Dorff? A. I did.

Q. All right. A. Because everytime you appear before a grand jury they admonish you not to repeat what you had testified to before the grand jury. And I thought that that should not be in the letter and I suggested that to Mr. Dorff. And he says, "I will take it out."

Q. Now the words which appear, that is, taking out the words where you gave the details of what you testified to in the grand jury and in their place put the words "And we have been informed that the person who cashed the bonds was subsequently indicted," will you tell us whether this is your language or Mr. (1093) Dorff's language? A. It is not my language. The next thing I know he sent back a corrected second page.

Q. But did he tell you how he was going to change it? A. If he read it to me on the phone he possibly did; I don't recall.

Q. In other words, the part with reference to being indicted was left in but the details were taken out? A. Correct.

Q. Thereafter, do you know whether or not the Treasury Department sent a letter in reply to the letter which they received from Dorff & Levy? A. They sent a reply I think to Mr. Levy and a copy to me or vice versa, I don't know which.

Q. Do you recall, going back for the moment, at the time of your talk with Mr. Dorff as to whether or not at that time Mr. Levy had already left for Europe? A. He told me had sailed I think the previous day.

Q. Dorff told you that? A. Yes.

(1094) Q. Now you then say that thereafter you did receive a letter from the Treasury Department of at least a copy of the letter which was sent to Dorff & Levy in reply to their letter of June 4, 1952? A. I did, yes. The letter dated July 14, 1952.

Mr. Rosenblum: I will offer this at this time. I offer Defendant's Exhibit Y for identification in evidence.

Mr. Hallinan: No objection.

(Defendant's Exhibit Y for identification received in evidence.)

(1095) Mr. Rosenblum: May I, your Honor, read both 24 as well as Y, 24 being the basis for the third count?

The Court: We have already read 24, haven't we?

Mr. Rosenblum: Yes. I have been reading the others.

The Court: 24 is a longer letter, two pages?

Mr. Rosenblum: It is a page and a small fraction.

The Court: All right, go ahead.

(Mr. Rosenblum reads Government's Exhibit 24 and Defendant's Exhibit Y to the jury.)

Q. Now, Mr. Miller, did you ever tell any Treasury agent that the man who was brought in by Mishel remained at some distance from your desk and that you never even bothered to look at this man and therefore could not furnish his description? A. I did not.

Q. Did you give the agents a description? A. I did.

Q. Did you thereafter testify before the grand jury in connection with that person? A. I did.

(1096) Q. And was he thereafter indicted? A. He was.

Q. I show you these last two documents on that file and ask you to look at them and tell us whether or not—we will take one at a time—as to U for identification whether you sent the original of that letter to Toplis & Harding, Inc.? A. I did.

Mr. Rosenblum: I offer U for identification in evidence.

Mr. Hallinan: I will object on the ground of relevancy.

The Court: I will sustain the objection.

Mr. Rosenblum: Exception.

Q. Thereafter, was the claim paid by the Pennsylvania Exchange Bank to the Government in the sum of $6648.50? A. Yes, it was.

Q. And were you reimbused by the bonding company? A. We were.

Mr. Rosenblum: I will withdraw this letter, if your Honor please. It is just an acknowledgment.

Q. Now, Mr. Miller, that completes that file.

Let me now ask you what the procedure was (1097) at the Pennsylvania Exchange Bank where an unknown person appeared——

Mr. Rosenblum: Withdraw that.

Q. First, whose primary duty was it to cash savings bonds? A. Tellers.

Q. Will you tell us in an instance where an unknown person, that is, a person unknown to anyone in the bank,

appeared at the bank with a savings bond, could the teller cash it? A. He could.

Q. Under what circumstances? A. The person presenting the bonds could present evidence of licenses or registrations or various things to identify who he was, and if it satisfied the teller, the teller would cash the bonds.

Q. In other words, if he had identification which was satisfactory in the eyes of the teller, he could cash it? A. Yes, sir.

Q. Now, if he had no such identification, could he cash it? Could a teller cash a bond for a person who came in who had no identification? A. Not unless he was in some way satisfied that (1098) the person identified himself.

Q. Now can you tell us whether or not if a person who was unknown to the bank and had no identification was identified by a known depositor of the bank who informed the teller of his basis for knowing this unknown person, could the teller then cash the bond for the unknown person? A. Yes, he was instructed and authorized to make such cashings.

Q. Was there any rule to the effect that under no circumstance could a teller cash a bond for an unknown person even if he is identified by a depositor of the bank—properly identified by a depositor of the bank—without the approval of an officer? A. No, there was no such rule.

Q. Mr. Mishel testified that on the occasion when the first bonds were cashed, that there was some sum like $884 turned over to him by you and that on that occasion he gave you $100. Is that the fact? A. That is not true.

Q. He also stated in a general way that in connection with all the other bonds which were cashed, that he gave you 10 per cent of the amount represented by the cashing. Is that the fact? (1099) A. That is absolutely untrue.

Q. Did you ever receive any theatre tickets from Mr. Mishel? A. No.

Q. Was there any occasion when you did procure tickets from him or through him? A. There was one occasion where one of the directors of the bank called me up one afternoon and wanted to get two tickets for that night for South Pacific, and he said he had to have them, it didn't matter what they cost. So I asked the boys on the platform if they knew anybody who could get two tickets in a hurry. One of the clerks said that Mishel could get tickets, and I told him to get a couple of tickets from him. He got the tickets and paid him for them.

Q. At Christmas time did Mr. Mishel, as other depositors did, send in some different items to be distributed to the employees?

Mr. Hallinan: I will object to the form, your Honor.

The Court: Sustained.

Q. Did Mr. Mishel ever send in anything to the bank in the form of gratuities for the employees?

(1100) Mr. Hallinan: I will object to the form of this, your Honor.

The Court: Sustained.

Mr. Rosenblum: Exception.

Q. Now you recall Mr. Mishel testified that the Chernoff bonds were turned over by him to you with the words "I trust you," and that you then put those bonds into your desk. A. That is untrue.

Q. Do you recall that testimony? A. Yes, I recall it. That is untrue.

Q. Well, tell us whether or not you had a key to your desk. A. Yes, I had a key.

Q. Can you tell us whether or not there was a duplicate key to your desk at all times in that bank? A. Yes, there was a duplicate key to my desk that hung on the duplicate key rack.

Q. On what? A. Duplicate key rack.

Q. Was that duplicate key in that rack to your knowledge at all times? A. It was there all the time that I was in the bank.

(1101) Q. I mean during the period that you were there. A. Yes.

Q. Now do you recall, Mr. Miller, that Mr. Mishel testified with reference to a $5000 bearer negotiable U. S. bond? Do you recall that testimony? A. Yes, I heard that testimony.

Q. At the time he claimed he said to you, "Hello, Jim" —by the way, did he ever call you Jim? A. Never.

Q. "Hello, Jim, I says, I got a $5000 negotiable bearer bond, coupon bond. I would like to get it cashed.

"He says, 'What's the story with it?'

"I said, 'It's a little bit long.' "

Now was there ever an occasion when he took up with you the cashing of a $5000 bearer negotiable U. S. bond which I think it was referred to as "long" and another place it said it was "warm"? A. No, he never discussed anything like that with me.

Q. He testified that you asked him for the numbers and that you would then give him, that you would then call him back. Did you ever ask him for (1102) any numbers? A. There was no such conversation, so there was nothing about numbers or anything about the bond either.

Q. Was there any place to your knowledge where numbers could be checked? A. I never had occasion to check any numbers and I never heard of such a place, to this minute I don't know any such place.

Q. Since this investigation came into being have you

checked to determine who at the bank handled the cashing of a $5000 bearer negotiable bond? A. I have.

Q. Who was that? A. Mr. Littlefield.

Q. Did you countersign a check which was issued? A. I countersigned the check the next day, yes.

Q. Was it a practice of the bank for two signatures to be on the check? A. Yes. Many an occasion of course I signed checks the next day.

Q. Was there some practice by some notation being (1103) made on the check in such a way that you could tell whether or not the check was signed by you the next day? A. I had a secret sign that only myself and the auditor knew which would indicate that the check wasn't signed at the time it was issued. Also, there is a duplicate of each check which when the check is typed up there is a duplicate copy of it. When I signed the check I would also sign on the duplicate. And if my signature didn't appear on the duplicate then it means that I didn't sign it at the time it was issued.

Q. In this instance does your signature appear on the duplicate? A. No, sir, it does not.

Q. Mr. Mishel also testified that he paid you some money in connection with the cashing by the bank of the bond I have just referred to for 5000? A. That is not true.

Q. Mr. Miller, you have heard the testimony, have you not, of Mr. Mishel to the effect that—the testimony I mean in this trial here—on one occasion when he said some of the Chernoff bonds were cashed, quoting Mr. Mishel, that when the teller (1104) balked about cashing or said he wanted more information before he would cash the bonds, Mr. Mishel said that you said to Kennedy to tell him, "Take your hat and coat and go home"—"Go in the back and take your hat and coat and go home, I'm still the boss." Did that ever occur? A. It never occurred, no.

Q. Horan, as to the same occasion, the witness Horan

testified that what Kennedy said to him was, "Mind your own G. D. business and do as I was told."

Did you make that statement to Kennedy? A. I am not given to swearing in front of my employees, and I never made any such statement.

Q. There was some testimony with reference to your giving Mr. Wilmot, who was a witness in this case, some opera tickets. A. Yes, I heard that.

Q. Were those tickets given to Mr. Wilmot in connection with the testimony he was to give in this trial? A. No. They were given to him because there were nights that my wife and I couldn't go. I knew that Mr. Wilmot was—he sings in a choir professionally, he is very much interested in music. And I was very (1105) happy to have the opportunity to give those tickets to him.

Q. On occasions did you give tickets to other people in the bank? A. Yes. I gave them to my secretary, and I believe I gave them to one of the guards one time also. Maybe others. Over a period of ten years I can't recall all of them.

Q. There was a witness here who testified by the name of Sam Siegel. A. Yes, I saw him and heard him.

Q. Do you have a recollection of ever speaking to him in your life or seeing him? A. I have no recollection of ever seeing the man. I am sure I never spoke to him. When he sat here in the box I didn't even recall who he was.

Q. He testified, as you recall, that he delivered sealed envelopes in some of which were theatre tickets and in others money. Did that ever occur? A. No, never.

Q. Do you recall a witness by the name of Schnabel who testified that he had come to the bank? Had you seen Schnabel at the bank? A. Yes, I recognized him. He was a messenger (1106) for Mishel's business.

Q. Can you tell us whether or not in connection with Mishel's business at the bank from time to time vari us

papers or documents were brought to the bank by either Mishel or his messengers? A. Oh yes, on many occasions.

Q. Tell us under what circumstances it would be necessary for him to send any documents. A. If he sent a note over to the bank that he had purchases, say, from a corporation and the note was made to a corporation we couldn't accept it until we had had executed a corporate resolution authorizing the transfer of that note from the payee to Mishel or one of his companies. If we were checking a note which he had presented and decided to take the note the credit department would make up this corporate resolution and Mishel would send over and get it, have it executed and returned, and that note would be discounted.

If the note was made payable to an unincorporated company, a trade name, as you are familiar with, it would be necessary for him to get a certified copy of the trade certificate and submit it with the note.

In some cases he would send over a note which (1107) we checked and he might have additional information in his office such as a credit report which he would send over for our credit man to read, so we wouldn't have to draw another report.

In some cases there were guarantees would have to be executed by the people who were the payees of the notes. There were a number of papers, many papers. I don't know whether I have covered them all or not.

Q. Did some of these papers come to you? A. Yes.

Q. Some to the credit department? A. Yes.

Q. Some to the tellers? A. Well, I don't think any would go to the tellers.

Q. Not on loans? A. No, not on loans.

Q. Would deposits come to you? A. No.

Q. Or would deposits go direct to tellers? A. They would go direct to the tellers.

Q. Let me give you one broad question. Did you at any time receive envelopes containing money other than

money in connection with a legal operation or (1108) transaction of the bank? Did you ever receive money in sealed envelopes or open envelopes from either Mr. Siegel, Mr. Rosenberg, Mr. Schnabel, Mr. Mishel, or any other person? A. No, never.

The Court: I am not clear what your question is. What is it, did he ever receive money or did he ever receive money except in connection with a legal transaction? Which is it?

Q. Let me put it this way: From time to time were there occasions when money was paid for legitimate outstanding obligations at the bank?

Mr. Hallinan: I object to the form, your Honor. Ask him what was done.

The Court: I think you ought to put it in a general way.

Mr. Rosenblum: As to what?

Mr. Hallinan: I am not going to suggest, Mr. Rosenblum. You know what.

Q. Can you tell me whether or not Mr. Mishel had any personal loans at the bank? A. He had a loan on a Cadillac automobile which was payable in monthly installments.

(1109) Q. Can you tell us whether or not that was a loan that was established at the 38th Street branch but which could be paid at either the 48th or 38th Street branches? A. It was.

Q. And could you tell us whether or not with regard to payments of that loan money would be sent down by Mr. Mishel or brought by him? A. Well, I can't testify from any personal knowledge myself.

Q. Who would that go to? A. Well, it would go to a teller.

Q. That would not come to you as an officer? A. No.

Q. At any time for any illegal or improper purpose did you receive cash in envelopes, sealed or open, or in any other way from Mr. Sam Siegel? A. Never.

Q. Would the same answer apply if I asked you about Mr. Norton Schnabel? A. Same answer; never.

Q. Can you tell us whether or not the answer would be the same if I asked you whether or not it would (1110) apply to Irving Mickey Rosenberg? A. Same answer; never.

Q. And how about Mr. Mishel himself? A. Same answer; he never gave me any money.

Q. Did any other person deliver money to you for an illegal purpose as coming from Mr. Mishel or from any other person? A. Never at any time.

Q. When I mention Rosenberg's name, it reminds me: there is testimony here by Mr. Mishel that at the time Mishel testified he was having Rosenberg make some changes on the bonds and or the redemption forms in one of the rooms in the back near the safe deposit vaults, and he testified that on that occasion you came in there, leaned over the shoulder of Rosenberg and said in connection with the bonds and also in connection with the redemption forms, "Don't sign the name here but sign it here," and then that was as to the bonds and as to the redemption forms again you said to Rosenberg, "In the back there, in the back there; don't sign here. Sign it there," in several different places? A. That never happened.

Q. In the record, Mr. Miller, it appears—(1111) I think yesterday I showed it to you—where there is a reference to five $1000 Missouri Railroad stocks or bonds without tying it into anything else, but Mr. Mishel testified and

threw in as part of his statement something about five $1000 Missouri Railroad stocks or bonds; do you recall that?

Mr. Hallinan: I will object to the form of the question, your Honor.

The Court: Sustained.

Q. Mr. Mishel testified with reference to—made a comment with reference to five $1000 Missouri Railroad bonds; do you recall that? A. Yes, I recall that.

Mr. Hallinan: I do not like these words about "comment," "testified." If he wants to ask him what the man testified to, I do not object to it, but I think these side comments are objectionable.

Mr. Rosenblum: I will take the record if you want me to. I did not want to take the time.

Mr. Hallinan: If that is the only way you can put it correctly, do so.

The Court: We will go on. We have had (1112) this one answered. Go on.

Q. Mr. Miller, tell us, was there an occasion when Mr. Mishel did put up as collateral five $1000 Missouri Railroad bonds? A. The records show that on one occasion he made a loan of, I think, $1300 secured by five $1000 Missouri Pacific Railroad bonds. The loan—I don't know—was for 60 days or something, and it was paid.

Q. For a certain period of time? A. Yes.

Q. Was there ever anything said to you at any time that there was anything wrong with those Missouri Pacific bonds? A. Never. I never even heard any inference of it until he testified here.

Q. Your records do show that there was a loan in the sum of approximately $1300? A. Yes.

Q. Was that loan paid? A. It was.

Q. Were the bonds returned to Mr. Mishel? A. So the records indicate.

Q. For that matter, in connection with the $5000 (1113) U. S. Savings Bond that he testified about, did you ever hear there was anything wrong with that bond? A. No, I haven't heard it even until now. I don't know what is wrong with it. All the time I worked in the bank, there was never any notice that there was anything wrong with it and I have asked the people in the bank and they have never heard that there is anything wrong with it.

Q. One of the witnesses—I don't remember who—made a statement that he believes or he thinks that you were on one occasion at Mishel's office.

Tell us, were you ever at any one of his offices, wherever those offices may have been A. I was never in his office and I never saw him outside of the bank in my whole life until I saw him here.

Q. Mr. Mishel testified that he made payments of moneys to you in the Time and Life Building near the bank.

Do you know whether there is a Time and Life Building near the bank? A. Yes, the Time and Life Building is right across the street from the bank.

Q. Is that a large building? (1114) A. Oh, yes, very large, very busy corridor runs through that building.

Q. Did you ever meet Mr. Mishel in a corridor of the Time and Life Building? A. Never.

Q. He says he made payments to you—that is, when he testified—in a little bar at 59th Street and Park Avenue.

Were you ever in a little bar at 59th Street and Park Avenue with Mishel? A. Never.

Q. He also testified that he made payments to you at a nice little restaurant down the street on 48th Street.

Were you ever at a nice little restaurant on 48th Street with Mr. Mishel? A. No, sir, I was not.

Q. He also testified that on one occasion he was with you at Quo Vadis.

Now, will you tell us when for the last time you were at Quo Vadis? A. I have never been to Quo Vadis Restaurant.

Q. Never in your life? A. Never in my life.

(1115) Q. You were never there with Mishel? A. Never with Mishel or with anyone.

Q. I think I asked you about a meeting that Mr. Mishel claims he had with you at the Holland House, and I think on another occasion he said he paid you money at the Holland House.

Did you ever meet him at the Holland House? A. I never met him at the Holland House; he never paid me money anywhere.

Q. There or at any other place? A. No place.

Q. Mr. Miller, do you recall making loans to Mr. Mishel in connection with his or his wife's liquor store sometime in 1950? A. Yes, we made two loans to the liquor store. I believe it was in March of 1950.

Q. Do you know whether those dates would be about March 2 and March 9, 1950? A. Yes. I actually don't recall, but we have looked at the records recently. I know those are the two dates.

Q. Will you tell us, please, who applied for the loan? A. Mr. Mishel.

(1116) Q. Will you tell us where it was that he applied for the loan? A. At the bank.

Q. Now tell us what happened on that occasion. A. He made an application for a line of $10,000 for the liquor store. My line limit was $5000.

Q. When you say "my line", just what do you mean by that? A. That I could hand him right away without referral. I gave him a loan of $5000, and the other $500

I held and waited for the executive committee, and they approved the $5000. That's how it happened to be that the loan was split into two dates.

Q. Did he submit any data of any kind with regard to his application for these two loans? A. He submitted a financial statement as of the end of the previous calendar year, yes.

Q. And do you recall the name of the liquor company at that time? A. I guess it was Mishel Wine & Liquor.

Q. You say that you, on the occasion of his applying, granted his request for $5000 based upon the information he made available to you? (1117) A. I did.

Q. Was that information added to the other credit file data which was available at the time? A. Yes. After I looked at the statement, I put it in with the credit file and handed the file and the statement back to the credit manager.

Q. Then thereafter what did the executive committee do? A. They approved the additional $5000.

Q. And was that a unanimous approval? A. Yes.

Q. And the other $5000 was advanced to him? A. Yes.

Q. Do you recall for how long a time that loan was supposed to run? A. I don't recall, but I would say we usually made the loans for 90 days.

Q. Can you tell us whether or not the Mishel Wine & Liquor Company paid that $10,000 loan or the two loans totalling $10,000? A. No, they never paid the loans.

Q. Will you tell us what happened? A. Well, shortly after we made the second $5000 loan, we received information that he didn't (1118) own the store. At the time he made the loan he had already sold the store. I got him into the bank and asked him——

Q. Who received the information? A. It came to me, I believe, through the credit department.

Q. Under your system, did the credit department keep current with information as it became available from vari-

ous sources as to the persons who owned money to the bank?

Mr. Hallinan: I will object to the leading question, your Honor. I have not very much, but I will this time.

The Court: Sustained.

Q. You say you got that information from the credit department? A. From the credit department, that's right.

Q. Will you tell us what that information was? A. That the store had been sold on a date prior to the date that we made these loans.

Q. That would be some date prior to March 2, 1950? A. Yes, yes. So I got Mishel into the bank and I asked him to explain it, and he said it was true he (1119) had sold the store but that under the system that the State Liquor Authority had, when you sold the store the transaction was held in escrow for 30 days while the State Liquor Authority checked the new owners to see if they would qualify for license, and he said that the money was all there and that it was his intention when the deal was finished to pay the loan at the bank.

I said that didn't satisfy me. I said, "You had no right to come in here and say you owned the store and give us a financial statement and make a loan when you didn't even own the store."

And I insisted that he pay the loan immediately. He said that he couldn't pay the loan immediately, he says, "But I don't want you to worry. I will put up collateral for the money."

He came into the bank—I don't know whether it was a few days later or a couple of days later—and he had collateral consisting of stock exchange securities.

(1120) Q. Do you recall the name of the person to whom the securities had been issued? A. The securities

were issued in the name of Frank and Sadie Alpren. I told him that he would have to have a hypothecation certificate which would authorize him to borrow on the securities. I gave him the form. He took it out and had it executed and brought it back. So the loan was put on a collateral basis.

Q. And that hypothecation agreement was supposed to be signed by whom? A. The owner of the—the registered owner of the securities.

Q. And that was the name that appeared on the hypothecation agreement that was delivered to the bank? A. Yes.

Q. Do you recall whether that was sworn to before a notary, if you recall? A. My recollection is that it wasn't.

Q. It wasn't. All right. Now can you tell us what the value of the securities that you just described came to that he put up as collateral for the $10,000 loan? A. No, I can't tell you that; I don't recall.

(1121) Q. Was it in an amount which satisfied you that it protected the loan for the bank?

Mr. Hallinan: I object to this, your Honor.
The Court: Sustained.

Q. Can you tell us whether it was in an amount the same, less, or more than the amount of the loan? A. More.

Q. More than the amount of the loan? A. Yes.

Q. Were they all stock exchange securities? A. I believe they were, but I wouldn't want to say definitely. I don't remember the names of the various stocks. My recollection is that they were all listed.

Q. You say he brought these in and left the securities as collateral with the hypothecation agreement? A. Yes.

Q. When for the next time did you do anything with regard to that loan? A. Sometime I believe it was a month or maybe two months later, I am not sure of the

exact time, but sometime I believe in May, Mr. Reedy, the vice-president of the bank from the 38th Street office, who was in charge also of the Small Loan Department, (1122) came up to the bank and told me that he had received a tip that something was wrong with the liquor store loan and the securities. I don't recall exactly what he said was wrong, but the tip was that there was something wrong and that we should look into it. I told him to go down and see the District Attorney.

Q. What District Attorney did you send him down to see? What office? A. New York County District Attorney. And he went down and reported the matter to the Assistant District Attorney there. And some time later two detectives came into the bank, I don't know whether they had a stop order or a pick-up order, but whether they had a stop order at that first visit, some time later anyhow on a pick-up order they took the securities out of the bank and said they were stolen.

Q. They were stolen from—Alpren's securities were stolen? A. Yes.

Q. After the occasion when you sent Mr. Reedy down to report what you had learned about the securities which later turned out to be stolen, did you appear as a witness before the grand jury? A. Yes, but it must have been a couple of years (1123) later. I think it was 1952 I believe.

Q. '52? A. Yes.

Q. Did you appear and testify against Mishel? A. I did, I did. And he pleaded guilty and got the sentence that he is serving right now.

Q. That is, 10 to 20 years? A. Yes.

Q. You say that you sent Mr. Reedy down about May 1950? A. Yes.

Q. Is that right? A. Yes.

Q. Did you later learn that on October 6, 1950 four or

five months later, Mr. Mishel was arrested in connection with a Federal matter? A. Yes.

Q. Arising out of the Chernoff bonds? A. Mr. Sershen told me that.

Q. I just want to get the date. You sent Reedy down about four or five months before the date of that arrest? A. Oh, yes.

Mr. Hallinan: I think that is clear, your (1124) Honor.

Q. Now you say you also testified before the grand jury against Rosenberg in connection with the Chernoff bonds? A. Yes, I did.

Q. Do you know whether he went to jail in connection with that?

Mr. Hallinan: I will object to this, your Honor.

The Court: Sustained.

Q. Do you recall about when you testified against Rosenberg in the grand jury?

Mr. Hallinan: I object to that.

The Court: Objection sustained.

Mr. Rosenblum: Exception.

I think I am about finished. I would like to check my notes, if I may.

The Court: All right. We will take a brief recess now. We will take a recess until 20 minutes past three.

(Short recess.)

The Court: All right. Have you anything else, Mr. Rosenblum?

(1125) Mr. Rosenblum: No, I have no further questions.

The Court: All right.

Cross examination by Mr. Hallinan:

Q. Why didn't you go down to the District Attorney's office with this information about Mishel's loan? A. I had other people in the bank to do things like that.

Q. You had processed the loan, hadn't you? A. Yes.

Q. You knew more about it than anybody in the bank? A. I wouldn't say that I knew any more about it.

Q. I am sure you wouldn't.

Mr. Rosenblum: May we——

Mr. Hallinan: I am sorry. I withdraw that.

Q. Who else knew as much about it as you did? A. The credit department had all the records of the loan.

Q. They knew it from records; you knew it from two sources, the records and personal contact? A. Yes.

Q. You didn't go down precisely because you (1126) didn't want the whole roof to blow off your relationship with Mishel? A. Of course not.

Q. Of course not.

Mr. Rosenblum: May we have no comment.

The Court: Don't repeat the answer.

Mr. Hallinan: I am sorry, your Honor.

Q. Now you testified that you never remembered Siegel until he took this witness stand, you have never seen him until he took this witness stand? A. I certainly don't recall him; no.

Q. Did you ever hear the name before? A. Yes.

Q. The name was on record at the bank, wasn't it?

A. The records at the personal loan department of 38th Street which didn't come under my review.

Mr. Hallinan: May we have this marked for identification, please.

(Marked Government's Exhibit 45 for indentification.)

Q. I show you Government's Exhibit 45 for identification and ask you what it is, Mr. Miller? A. That is a signature card for a checking account in the name of Sam Marco.

(1127) Q. Any other names on it? A. Care of Sam Siegel.

Q. Where was that record kept, Mr. Miller? A. In the signature file at 48th Street.

Mr. Rosenblum: May I see that, please?

Mr. Hallinan: Yes (handing).

Q. You maintain that you have never seen Siegel or this individual that testified at this trial, is that right? A. I certainly didn't recall him; I still don't.

Q. Could you have seen him at the bank, do you think? A. It is possible, yes.

Q. But you have no doubt about the fact about knowing Norty Schnabel? A. No doubt about it at all.

Q. And how do you know him? A. Well, he was, as you saw, he is quite a large man, and he had a harelip and——

Q. I am sorry. Go ahead. A. He stuck in my mind.

Q. It would be very difficult to forget a person like that, wouldn's it? A. Correct.

(1128) Q. Mr. Miller, do you recall being examined before trial in 1951 in the matter of the Pennsylvania

Exchange Bank, Plaintiff, against Rialto Realty Corporation, Irving Spieler and Irving Mishel, Defendants, and a third party action, Rialto Realty Corporation, Third Party Plaintiff, against Irving Mishel and James W. Miller, Third Party Defendants? Do you recall that matter? A. I recall the matter. I don't recall the part of it that you refer to.

Q. Do you recall giving testimony under oath in connection with that hearing? A. I probably did.

Q. Do you recall it? A. Not offhand, no.

Q. Do you recall that that hearing was held at the bank, at the Pennsylvania Exchange Bank, 48th Street branch, 20 West 48th Street, on April 19, 1951, at 2.30 p.m.? A. It could have been. I don't recall it offhand.

Q. Do you recall being asked these questions and giving these answers:

"Q. Do you know a person by the name of Morty (1129) or Mortimer Schnabel?

"Mr. Weiss: The same objection, the same reservation.

"Mr. Merzansky: You don't know who this fellow is. How can you object to it?

"Mr. Weiss: I don't see what it has got to do with the examination."

I will say parenthetically I am just reading this because this matter appears as colloquy.

"I am making my objection on the record. You don't mind, do you?

"Mr. Merzansky: No.

"Mr. Weiss: Do you know what the question is, Mr. Miller?

"A. Mortimer Schnabel?

"Q. Yes. A. No."

Do you recall being asked those questions and giving those answers in 1951? A. I don't actually recall, no.

Q. Now the reason you say you remember him is because he is a heavy-set fellow and has a harelip and he is not easily forgotten; is that correct? A. That is correct, yes.

(1130) Q. Were you asked these questions and did you give these answers:

"Q. You have never met anyone by the name of Morty or Mortimer Schnabel?

"Mr. Weiss: I object on the ground that the witness has answered the question. I direct him not to answer.

"By Mr. Merzansky:

"Let me try to describe him to you. Would it help your memory if I told you that he was a person that had a harelip and was a messenger in the employ of Irving Mishel?

"Mr. Weiss: The same objection, the same reservation. He may answer.

"A. No, it doesn't.

"Q. Does that refresh your recollection? A. Not a bit, no."

Do you recall being asked those questions and giving those answers in 1951? A. I don't recall, no. But I do know that recently the name Morty Schnabel came up, and I asked Brennan, I said, "Who is this Morty Schnabel?"

And he said, "Well, he is the fellow with the harelip, the big fat boy from Mishel's office."

(1131) Q. And that is what a few months back refreshed your recollection as to Morty Schnabel? A. Yes.

Q. If you asked this question that you say you now cannot recall would it have helped refresh your recollection in 1951? A. I should think so, yes.

Q. And that is precisely the last question I read to you, wasn't it, a description of that man? A. What was your question again?

Q. That is precisely the question that I just read to you, a description of this man with a harelip, wasn't it? A. Yes, yes.

Q. What connection was there between Morty Schnabel and Irving Mishel? A. He was a messenger or runner for him.

Q. In the employ of Irving Mishel? A. I don't know. He said he was.

Q. When was that, back when you knew him at the bank? A. He said it right here.

Q. Well, was he a messenger for Mr. Mishel; did you know that? (1132) A. He came into the bank as a messenger, yes.

Q. Do you recall in this same examination in 1951 being asked this question and giving this answer:

"Q. Well, do you know any person in the employ of the defendant Irving Mishel? A. No."?

My question is simple, Mr. Miller. Do you recall being asked that question? A. I don't recall any of these questions. I thought I made that plain in the beginning.

Q. I think you testified—you correct me if I am wrong—that Mishel used to send messengers to the bank on his errands. A. Yes.

Q. You recall that now? A. I just said it about a half-hour ago, yes.

Q. That is very good. You will just have to be patient with me because I might have a lot of questions to ask you, Mr. Miller.

Mr. Rosenblum: May the last part be stricken out?

The Court: All right.

James W. Miller—Defendant—Cross

Q. Do you recall in 1951 at this examination (1133) before trial being asked this question and giving this answer:

"Q. Did Irving Mishel at any time within your knowledge cause certain moneys to be brought to the bank for deposit or for any other purpose by a messenger in his employ? A. It could have been, I wouldn't know"?

Do you recall that question and that answer? A. No, I don't recall any of this hearing that you are talking about.

Q. Do you recall testifying, Mr. Miller, that up until two months ago the term "stiff accounts" had never crossed your life, you had never heard it before? A. Up until recently, yes. I don't know whether I said two months, but recently.

Q. I think you said several months. A. Yes.

Q. Have you thought about that statement since you made it? A. No.

Q. Would you think about it now and tell me if that is the first time that you ever heard that term? I want you to go way back to 1931 and come forward and (1134) see if you ever heard that term before? A. I don't recall ever having heard it before.

Q. Didn't you hear it in 1931 when the State Banking Department forced you to close several stiff accounts? A. I don't recall it, no.

Q. Would you say it did not happen, Mr. Miller? A. No, I wouldn't say it didn't happen.

Q. Do you recall ever being examined by the State Banking Department back around 1931? A. No.

Q. Do you recall ever being examined by the State Banking Department in connection with "stiff account"? A. No.

Q. You don't recall an examination in 1954 pertaining in part to that? A. No.

Q. Did the State Banking Department ever force you

to close any account at the Pennsylvania Exchange Bank? A. I couldn't say. They probably could have or they could not have. I don't recall.

(1135) Q. Wouldn't you remember something like that, Mr. Miller? A. I don't remember it at the moment, no.

Q. You have no recollection at all? A. Not at the moment, no.

Q. Can you ever recall being examined by the State Banking Department at any time? A. Yes.

Q. When was that? A. A few years ago.

Q. Do you recall a man by the name of Collier who used to work at the Pennsylvania Exchange Bank? A. Oh, yes.

Q. What period of time was he employed at the bank? A. I don't know when he started there. He was there with me up until about, I would say, 1944, 1945, when he died.

Q. In what capacity was he employed? A. President.

Q. And in what capacity were you employed while he was there? A. Vice-president.

Q. Do you recall at any time in your association (1136) with Mr. Collier while you were at the bank Mr. Collier criticizing you for making loans to bookmakers? A. No.

Q. You cannot recall that? Would you say it did not happen? A. I don't remember him criticizing me about anything like that, no.

Q. Do you recall Mr. Collier at any time——

Mr. Rosenblum: May I, if your Honor pleases, object to this entire line?

Mr. Hallinan: May we approach the bench?

Mr. Rosenblum: I am keeping in mind your Honor's previous ruling on proof that was offered.

Mr. Hallinan: I will argue it completely.

The Court: I won't sustain the objection to the

entire line of testimony, but I am not making any commitment as to how I will rule on individual questions. You just make your objections as they come up.

By Mr. Hallinan:

Q. Do you recall at any time during your association with Mr. Collier while he was president at the bank his criticizing you for allowing bookmakers (1137) to draw against uncollected funds?

Mr. Rosenblum: I object to this question. I do not think it is relevant and I do not think it is within the scope of the examination.

The Court: I will sustain your objection to the question on form.

Mr. Hallinan: May I be heard, your Honor?

The Court: Yes.

Mr. Hallinan: We will have to be heard at the bench.

The Court: All right.

(The following proceedings took place at the bench, not in the presence of the jury.)

The Court: I sustained the objection because of your characterization "criticizing." You can ask about any conversation you want.

Mr. Hallinan: Then there is no argument.

Mr. Rosenblum: My objection is based upon the fact that your Honor said in connection with the examination of witnesses you would limit it only to convictions.

The Court: No, as going to credibility, I let you go into matters going to credibility as to false testimony as to his prior convictions. You (1138) explored that fully.

Mr. Hallinan: I think I am proceeding on the theory with which your Honor is well familiar, 224 Fed. (2d), the Pogano case. On his direct examination there are about 20 pages in the record of his background at the bank.

Mr. Rosenblum: Exception.

(Proceedings were resumed within the hearing of the jury as follows.)

By Mr. Hallinan:

Q. Did Mr. Collier ever state to you that you were allowing bookmakers to draw against uncollected funds? A. I don't recall.

Q. Did you in fact allow bookmakers to draw against uncollected funds? A. I don't recall.

Q. Would you say you did not? A. Oh, no, I wouldn't say I didn't.

Q. What constitutes an uncollected fund, Mr. Miller? A. It is a check that has not been paid at the time a payment is made against it by the bank.

Q. And for a bank—correct me if I am not (1139) stating this correctly—but for a bank in New York where a check is deposited, assume that it was deposited in the Pennsylvania Exchange Bank, drawn on another New York bank, you have a three-day period in which the other bank cannot dishonor the check; is that correct, so for three days it would remain an uncollected item on your record? A. That is not so.

Q. What is so? A. A check deposited in the bank today, you get credit the next morning at 9 o'clock. So it could only be uncollected for the day that it is deposited in the bank.

Q. What do you allow for out-of-town items? A. We have a schedule. Of course, it has changed over a period

of years. You would have to tell me the exact time you are referring to.

Q. Did Mr. Collier ever ask you to stop allowing certain accounts to kite checks? A. Not to my knowledge.

Q. Did you in fact allow people to kite checks? A. No.

Q. Do you recall being examined by the State Banking Department back in 1931 as to allowing a person (1140) by the name of Harry Brown, a bookmaker, to make book in a public telephone in the lobby of the Pennsylvania Exchange Bank? A. No, I don't recall any such examination back in 1931.

Q. Did that in fact happen? A. It did not happen.

Q No one made book from the bank, that is what you are saying? A. They certainly did not.

Q. Did you ever allow anyone at the bank to cash checks knowing that the endorsment of the payee was not the proper one, not the proper person making the endorsement of the payee? A. I don't recall any such incident, no.

Q. Have you ever heard of the name Richard R. Newman? A. Is this the Newman we have been talking about here?

Q. Did you ever hear of the name Richard R. Newman? A. Possibly. We had a lot of Newmans.

Q. Did you ever hear of the name Richard R. Newman? (1141) A. I couldn't say.

Q. Didn't you in fact allow him to cash checks on his endorsement on the back of the payee when you knew he was not the payee? A. I doubt it. I don't recall it.

Q. Now, isn't it a fact, Mr. Miller, that from at least 1931 up to shortly before you left the bank you allowed people to have accounts there in fictitious names? A. No.

Q. You thought about that for a minute. Is there any doubt in your mind about that? A. No, there is no doubt in my mind.

Q. Did you ever make a loan while you were at the bank in excess of the statutory amount? A. Did I personally?

Q. Yes. A. Well, we had some argument with the Banking Department at one time as to whether loans we made exceeded the statutory limit or not. According to my interpretation and the bank's interpretation and the committee's interpretation, they didn't exceed the statutory limits.

Q. The argument you refer to is a full-scale (1142) investigation by the Banking Department; isn't that right, Mr. Miller? A. I don't know what you mean by a full-scale investigation by the Banking Department, and I don't know what you refer to.

Q. Did they examine you under oath at that time in connection with that matter? A. Did who examine me—the Banking Department?

Q. Yes. A. No.

Q. Are you sure about that? A. I am quite sure.

Q. Did you ever certify checks against uncollected funds while you were at the bank? A. No.

Q. Are you sure about that? A. There was a question like that came up some years ago. Yes, it was a practice in the bank at that time not only for me but for other officers to do it.

Q. But it was your practice at that time? A. It was the practice of the bank, yes.

Q. Is that a safe banking practice? A. I don't quite get your question.

Q. Let me break it down. There are certain (1143) practices that a bank might follow which might not be safe from the bank's viewpoint monetarily.

Now do you understand the question? A. Oh, it was a safe practice, yes. As a matter of fact, it's been the practice in Wall Street—in those days they had one-day

certifications which were certified against uncollected without anything.

Q. Did you follow that practice also at the Pennsylvania Exchange Bank? A. We didn't do any stock exchange business.

Q. You referred to another practice down on Wall Street. Was it also your practice to certify when nothing was in the account? A. No.

Q. Now, didn't you allow Mishel to kite checks in one of his accounts? A. I did not.

Q. Can you tell us as a banker what one of the first signs of a check kite is in an account? A. Well, I haven't been on that operating end in such a long time I couldn't tell you what would be the first thing, no.

Q. Not the first thing; anything. A. You said the first thing.

(1144) Q. I am sorry. Anything that might indicate to a banker by looking over certain records at the bank that a check kite might be in existence. A. Yes, I would say that if he was what we could call covering every day, depositing checks to cover checks that were already in full payment.

Q. Now, you check me if I am wrong, but so that the jury might understand, I want to give a brief description of a check kite. Would this be correct to say: Take two banks in New York, Bank A and Bank B. I go into Bank A and I write out a check. I open a small account, say with five dollars, assuming that can be done. I write out a check drawn on Bank B for a thousand dollars. I deposit it in my newly opened account in Bank A. I immediately draw a thousand dollar check against my account at Bank A. The following day I come back to Bank A, I repeat the same procedure, then I hustle over to Bank B and deposit a thousand dollars for the incoming check.

Does that basically describe a check kite? A. Yes, that is a very good and simple explanation of it.

Q. And you say one of the good signs is a person that is drawing against uncollected; is that right? (1145) A. No, I didn't say that.

Q. I am sorry. You say what you did again, then. A. I said if he was covering his checks every day.

Mr. Hallinan: Mark those, please.

(Marked Government's Exhibit 46 for identification.)

Q. Let us talk about Mishel for a moment. Wasn't he doing that, precisely that? Wasn't he coming down to the bank daily to find out what the state of an account was, to get cash in, to get checks in to meet incoming items, exchange items? A. He didn't come to me about it, no.

Q. Mr. Miller, did he come to the bank? A. He was in the bank quite often.

Q. Did he come for that purpose? A. I couldn't tell you whether he came for that purpose alone or not.

Q. Did you have referral sheets at the bank for that purpose for different accounts, to find out what was in, what they want to draw that day and so forth? Did you have referral sheets? A. Yes. We have two types of referral sheets.

(1146) Q. What are the two types? A. One for the checks that come through the exchanges and those that are over the window. No, I am wrong. It is only the two sheets, one for each office. They are all put on the same sheet.

Q. It all relates to exchange items basically, doesn't it? A. Yes.

Q. What is in that day for collection and what they want to take out of the account? A. That is right, correct.

Q. I show you Government's Exhibit 46 for identifica-

tion and ask you if you recognize—I think there are 26 slips in there—if you recognize those documents? A. Yes. Those are charges made against the account of Irving Mishel for paying checks which apparently came through the exchanges and were covered the same day.

Q. On the description I just gave you and with which you agreed, would that be some evidence of a check kite in existence? A. It possibly could, yes.

Mr. Hallinan: I think I would like to (1147) circulate these, your Honor.

Mr. Rosenblum: It is not in evidence yet.

Mr. Hallinan: You are right. I will offer them in evidence.

Mr. Rosenblum: I object to this offer at this time unless there is a showing first made that it is connected with Mr. Miller. I don't know whether it is——

The Court: I will sustain the objection.

Q. Do you know, Mr. Miller, who handled Mishel's—first of all, do you know if there was a referral sheet daily for Mishel at the 48th Street branch of the bank? A. A separate sheet?

Q. Either a separate sheet or a referral sheet—I will withdraw that.

The referral sheet was a sheet of paper with various accounts listed on it, was it not? A. Oh, yes.

Q. Was there that type of sheet referring to Mishel's account? A. I don't recall that he had a separate sheet, no.

Q. I am not saying a separate sheet. Was there a sheet reflecting his name on it or his account? (1148) A. There was a referral sheet made up every day and if this—if he were on the referral list his name should be there, yes.

Q. Do you recall that Mr. Lucey at one time and Mr. Brennan at another used to handle that as far as Mishel

was concerned, the referrals? A. They would handle the referral sheet for everybody.

Q. I understand that. If you will just try to understand that my question is only limited to Mr. Mishel at the bank I think it will be a little clearer and a little easier.

Do you recall that Mr. Brennan and Mr. Lucey used to handle the referral sheet for other people probably also but for Mr. Mishel? A. They handled the daily referral sheet. They handled it for the bank, not for Mr. Mishel.

Q. Did they handle the sheet with Mr. Mishel's name on it called the referral sheet? A. Yes.

Q. The pieces of paper in Government's Exhibit 46, don't they grow out of the matter that would be contained on that referral sheet? A. Yes.

(1149) Mr. Hallinan: I will reoffer that, your Honor.

Mr. Rosenblum: I still submit, if your Honor please, there is no showing that Mr. Miller had anything to do with this.

Mr. Hallinan: He knows about the sheet with Mishel's name on it.

The Court: I think you had better develop what a referral sheet is.

Mr. Hallinan: Does your Honor wish to adjourn now?

The Court: I did. But if you want to clean this up, all right, but if it is going to get us off into several questions we will have to adjourn to tomorrow.

Q. Do you know what a referral sheet is, Mr. Miller? A. Yes.

Q. Would you describe it for the Court and jury, please? A. It is a sheet that is made up every day. Checks come to the bank to be paid, they come through what we call

the exchanges. A messenger goes down to the Federal Reserve Bank every morning and he picks up all the checks that are drawn on our bank. They (1150) go into the bookeeping department to be posted on the ledgers, and the checks which are uncollected or short, according to the bookkeeper's calculation, on the ledger, are then listed on this referral sheet.

That referral sheet is then sent—there is one made for the 38th Street office and there is one made for the 48th Street office. The one at the 48th Street office, they got the information by telephone from the bookkeeping department which was in 38th Street. They make up the sheet. Then the officer or chief clerk who was handling the referral sheet would take them to the tellers to see if the deposits had been made to cover these checks that are uncollected or short; also to make sure that the checks were actually uncollected they would check back in the bookkeeping department, because many times checks were listed on the referral sheet as short which were not short, because the system that we used on the deposit ticket, when the delays are posted, if there's ten checks on the deposit ticket the delay is calculated for the entire amount for the check that takes the longest to collect. I think now that that system has been changed and they break it down by day so as (1151) to know when the various funds are good. The officer in charge of the referral sheet went into all of that, to make sure that the checks were properly referred, that they weren't covered, that they were uncollected or they were short or they were covered. I believe that the manager or chief clerk had a limit which he could okay if it is uncollected, or short, too, because sometimes a check would come in which was short and the man handling the referral sheet would telephone to that customer. There might have been an error. So he would call, and if the man said, "Well, I am going to send the deposit over," and if the man, the chief clerk or the

manager thought warranted that service we would okay it and we would pay it, even though it made an overdraft. Other items would be referred to an officer for approval. When the sheets were brought to the officer, the one down at 38th Street, one to me, in most cases we would ask the man handling the sheet what he thought about it, and if he says "Okay" or "All right," we would initial it.

Mr. Hallinan: I will reoffer 46, your Honor.

The Court: All right. I will receive it.

Mr. Rosenblum: I renew my objection.

(1152) The Court: You objected on the ground that there was no showing that it came to the witness's notice.

Mr. Rosenblum: Yes. That is one thing. And second, that it is something that comes within his province to handle. I think it is clear from the answers that he gave that it comes in the province of other people outside of himself. I don't think that just because——

The Court: I will receive it.

Mr. Rosenblum: I will accept.

The Court: All right.

(Government's Exhibit 46 received in evidence.)

The Court: We will recess now, and you and counsel can come in at 10.45 instead of 10.30. But I will ask you to be here prompt at that time tomorrow.

(Adjourned to October 30, 1956, at 10.45 a. m.)

(1153)

New York, October 30, 1956;
11.00 o'clock a. m.

Trial resumed.

(Jury present.)

JAMES W. MILLER resumed.

Cross examination continued by Mr. Hallinan:

Q. Mr. Miller, do you recall yesterday being asked this question and giving this answer——

Mr. Rosenblum: Just a moment. I think we had reached the point with reference to the 26 documents.

Mr. Hallinan: Oh, I am sorry. Yes. Thank you for reminding me.

I did want to circulate those with the jury.

Mr. Rosenblum: No, before that. I wanted to be heard on this question of their admissibility. I think no foundation has been laid, I don't think that there has been any testimony which has been adduced from this witness up to this point which ties it in to him so that he could be the person through whom these documents can come in, if they do come in at all.

(1154) The Court: There is no question but that they are records kept in the regular course of business.

Mr. Rosenblum: No; I am not taking a technical position as to that.

The Court: I think that on the question of relevance, why, there is enough to let them come in, and then the weight will be a question of fact.

Mr. Rosenblum: I except.

Mr. Hallinan: Your Honor, in one document which I had the witness identify, and I forgot to offer yesterday, I should like to offer at this time. It is Government's Exhibit 45 (handing to Mr. Rosenblum).

There is no objection to this, your Honor.

(Government's Exhibit 45 received in evidence.)

Mr. Hallinan: I should like to circulate both of those.

The Court: All right.

(Mr. Hallinan hands to jury.)

(1155) The Court: May I see you a second, Mr. Hallinan?

(Mr. Hallinan approached bench.)

By Mr. Hallinan:

Q. Mr. Miller, do you recall being asked this question and giving this answer yesterday:

"Q. Can you tell us"——

Mr. Rosenblum: What page?

Mr. Hallinan: 1106, top of the page, first question.

Q. Do you recall being asked this question and giving this answer:

"Q. Can you tell us whether or not in connection with Mishel's business at the bank from time to time various papers or documents were brought to the bank by either Mishel or his messengers? A. Oh, yes, on many occasions"?

James W. Miller—Defendant—Cross

Now, my first question is: what do you mean by "papers and documents"? A. When he had notes to discount which were made to a trade name or a corporation, he would send the corporate resolution or certified copy of the trade certificate. There are other papers I can't recall at the moment.

(1156) Q. So we have two so far, notes and resolutions? A. No, I said notes, resolutions, certified copies of trade certificates.

Q. Who would bring these documents to the bank? A. Well, I can't separate who brought which. Sometimes Mishel might bring them in, sometimes he might send them over with a messenger.

Q. Was this true of every transaction where notes were involved? A. No.

Q. Where wasn't it true? A. Where wasn't it true?

Q. Yes. A. Where the note was made to an individual.

Q. Were the Rialto notes made to an individual? A. I don't recall. I would have to see the notes, Mr. Hallinan.

Q. You don't recall? A. No.

Q. In a case where the note was made to an individual, who would bring that over? A. Mr. Mishel might bring it over or he might send it over.

Q. Send it by whom? (1157) A. A messenger.

Q. Do you remember any of his messengers besides Mr. Schnabel? A. No, I don't.

Q. Mr. Schnabel is the only one you recall? A. He is the only one I recall.

Q. I will ask you the same question I asked you yesterday. Do you recall testifying in 1951 in a pretrial examination in the matter I directed your attention to yesterday? A. I don't recall the circumstances, no. I remember the title of the case.

(1158) Q. Do you recall being asked this question and giving this answer in the examination:

"Q. In every instance that the bank discounted obliga-

tions described in Exhibit 5 and Exhibit 6 for identification, were the notes delivered to the bank by Mishel personally? A. I couldn't say positively but I believe so. I don't remember any instance where they were sent over by messenger."

Do you recall being asked that question and giving that answer? A. I don't recall that, but from the way you read it it applied to specific obligations, not to general obligations.

Q. What ones, Mr. Miller? A. I don't know. You just read it there.

Q. You have a recollection of it, don't you? A. No. I remember the case, but I don't remember the notes that were involved or how many notes there were.

Q. I am going to refer to 1107 of the record yesterday. Do you recall being asked these questions and giving these answers yesterday:

"Q. Would deposits come to you? (1159) A. No.

"Q. Or would deposits go direct to tellers? A. They would go direct to the tellers."

Now once again I direct your attention to the examination before trial in 1951. First of all, who would make the deposit? A. What deposit, Mr. Hallinan?

Q. Did Mishel make deposits at the bank? A. Well, he had accounts there. I am sure he must have made them.

Q. Do you recall being asked these questions that I read to you from yesterday:

"Q. Would deposits come to you? A. No.

"Q. Or would deposits go direct to tellers? A. They would go direct to the tellers."

Do you recall answering those questions? A. Yes, sir.

Q. You don't seriously have any difficulty in what I mean when I say did Mishel make deposits at the bank, do you, Mr. Miller? A. If I inferred that, I am sorry.

Mr. Rosenblum: I think, if your Honor please, may I ask your Honor to look at that page to see (1160) whether or not the thing to do is to read what preceded that, so we get the full import of the subject matter.

Mr. Hallinan: Mr. Rosenblum will have time at the proper time——

Mr. Rosenblum: I object to there being taken from the minutes questions at a certain point unless the entire subject matter is given to the witness.

The Court: I have read the entire subject matter and I don't see any harm. As I understand, whatever lack of mutual understanding there is between Mr. Hallinan and Mr. Miller does not come out of anything that is on the rest of that page, so we will go ahead.

Mr. Rosenblum: It is what precedes it.

The Court: Or what precedes it.

Mr. Rosenblum: Exception.

Q. I direct your attention once again to the examination before trial, 1951, and I ask you if you recall being asked this question and giving this answer:

"Q. Did Irving Mishel to your knowledge ever send over a messenger boy to make deposits for him? (1161) A. Frankly, I don't take the deposits, so I wouldn't know."

Do you recall being——

Mr. Rosenblum: What page are you one?

Mr. Hallinan: I am on the examination before trial, on page 47.

Mr. Rosenblum: Oh.

A. I don't recall being asked that, and I don't recall the answer. But as I was not a teller——

Q. If you did give that answer would it be a lie then? A. No, I don't tell lies, Mr. Hallinan.

Mr. Hallinan: May we have these marked, the three separately?

(Government's Exhibits 47, 48 and 49 marked for identification.)

Q. I show you Government's Exhibits 47, 48 and 49 for identification and ask you what they are? A. No. 47 is a memo dated June 15, 1950 to Mr. Levy, counsel for the bank, from me, subject Irving Mishel.

No. 48 is a memo dated July 26, 1950 to Mr. Levy, counsel for the bank, from me, subject Irving Mishel.

(1162) No. 49 is a memo from me dated August 16, 1950——

Mr. Rosenblum: I can't hear you, Mr. Miller. Keep your voice up.

A. A memo from me dated August 16, 1950, addressed to Mr. Levy, of Dorff & Levy, counsel for the bank, from me, subject Irving Mishel.

Q. Now do those memos relate to this action that I have referred you to, the Rialto action? A. Yes.

Mr. Hallinan: The Government will offer these.

(1163) The Court: If the jury can stand the strain, we will go through until 12.30 and then come back at 1.45, because we got started late.

Mr. Rosenblum: I object on the ground of relevancy. I do not see any relevancy to them. At this time, anyway.

Mr. Hallinan: I am laying the circumstances

surrounding the examination so that I might refresh——

The Court: I will receive it.

(Government's Exhibits 47, 48 and 49 for identification received in evidence.)

Mr. Hallinan: They are brief and I should like to have Mr. Miller read them one by one to the jury, if he will, please.

(Witness reads Government's Exhibit 47 to the jury.)

Mr. Hallinan: Would you read the next one to the jury?

(Witness reads Government's Exhibits 48 and 49 to the jury.)

By Mr. Hallinan:

Q. Did you actually enclose the complaint in the documents referred to therein when you communicated with Mr. Levy? (1164) A. I suppose the secretary did. I don't send out the mail.

Q. Did you instruct her to do it, Mr. Miller? A. I think she was competent enough to know that they go with it.

Q. So you did not? A. No, I saw no need to instruct her.

Q. Now going back to that examination again, see if I can refresh your recollection.

Do you recall that in that examination you were represented by the law firm of Dorff & Levy, who we have heard of in this case already? They were represented by a Mr. Bernard Weiss, who actually accompanied you during the examination in the bank and acted as your counsel or counsel for the bank, and the attorney for the defendants and the third party plaintiff was a man by the

name of Samuel Mezansky, who had an office at 350 Fifth Avenue.

Does that bring back this examination to you, Mr. Miller? A. No. I said that there was such an examination but that I didn't recall the details of it.

Q. There was such an examination at the bank, was there not? (1165) A. There must have been, yes.

Q. And you don't recall the details? A. No.

Q. Do you recall generally what the examination was about? A. No. I remember generally what this case was all about, if you want to know.

Q. Mr. Miller, why in 1951 did you deny knowing Norty Schnabel? A. I probably didn't remember him at the moment.

Q. He was described to you, wasn't he? A. Yes.

Q. You do recall that, don't you, Mr. Miller? A. I don't recall that he was described to me. You read it out there, so it must be the fact.

Q. Why did you deny in 1951 that you knew anybody in the employ of Irving Mishel, Mr. Miller? A. I wouldn't say that I denied knowing—that I didn't know anybody in the employ of Mishel.

Q. Do you want me to read that question and answer again to you? A. Yes, I say I don't recall it.

Q. And if I read it to you again you still wouldn't recall it? (1166) A. I doubt if I would recall it. I don't recall the details of that examination.

Q. Can you think of any reason now why in 1951 you might have denied knowing anybody in the employ of Irving Mishel? A. No, I can't think of any reason.

Mr. Hallinan: Your Honor, I would like to offer the examination before trial. I have discussed this with Mr. Rosenblum. May we approach the bench just briefly?

The Court: All right.

(The following proceedings took place at the bench, not in the hearing of the jury.)

Mr. Hallinan: If Mr. Rosenblum wants to demand it, I will have to put on technical proof of the stenographer and perhaps the attorneys. Do you want the——

Mr. Rosenblum: I don't know until I get more information. I am trying to get more information on it.

Mr. Hallinan: I will have to line up these people.

Mr. Rosenblum: I would like to help you. I have been trying to cooperate with you so much (1167) at times it is even funny. I think I went further than I should have, but I think this is a matter that is new to me. I want to look into it and I want to see whether there is a reason I cannot agree.

Mr. Hallinan: I will get the witnesses for technical proof and have them tomorrow, probably.

(Proceedings were resumed within the hearing of the jury as follows.)

By Mr. Hallinan:

Q. You testified yesterday, Mr. Miller, that you granted Irving Mishel a personal loan and that collateral consisted of Missouri Pacific bonds; is that correct? One of the loans, a loan in the approximate amount of $1300? A. Yes.

Q. You knew exactly what was wrong with those bonds then, didn't you, Mr. Miller? A. I didn't know there was anything wrong with them, and I don't know now.

Mr. Hallinan: Mark this, please.

(Marked Government's Exhibit 50 for identification.)

James W. Miller—Defendant—Cross

Q. I think in going over your background you went into some detail. You have had considerable experience (1168) with securities and investments, have you? A. Yes.

Q. I show you Government's Exhibit 50 for identification. I ask you what it is? A. It is the collateral card.

Q. On what? A. On a collateral loan made to "I. Mishel, Special."

Q. Is this the card referring to the matter that we have just discussed? A. Let me see.

Q. (Handing.) A. Yes.

Mr. Hallinan: The Government offers Exhibit 50.

Mr. Rosenblum: No objection.

(Government's Exhibit 50 for identification received in evidence.)

Q. Mr. Miller, do some bonds come with coupons attached? A. Yes.

Q. Would you describe to the Court and jury what coupons are on the bonds? A. Coupons are little tickets attached to a bond (1169) which are cut off and sent in to get your interest on the bond.

Q. When are they sent in ordinarily? A. Some people send them in every year, some people send them in every three years, some people don't ever send them in at all.

Q. What is the ordinary procedure?

Mr. Rosenblum: I object.

Mr. Hallinan: He said he has had experience.

Mr. Rosenblum: I think he has explained it, about the word "ordinary," and I think he gave all three examples.

The Court: I will overrule the objection. Add: if there is one.

Q. If there is an ordinary procedure, what is it?

Mr. Rosenblum: I will withdraw my objection.

A. I don't know. In the bank, the bank certainly always cuts off its coupons and sends them in the day they are due. What other people might do I couldn't tell you.

Q. Do you have any experience with individuals with respect to bonds and coupons, from your past experience in investing in securities, advising in (1170) securities? A. Yes, but I never asked them what they do with their coupons. I have seen bonds brought in to the bank that had coupons for years attached.

Q. When you get a bond as collateral in the bank, or bonds, and the bonds are past due, does that have any significance to you? A. Of course not.

Q. You would treat those the same way as you would a bond not past due? A. Exactly the same.

Q. Can you tell us what coupons were attached to these Missouri Pacific's—withdrawn.

Can you tell us when the loan was made? A. According to the record here, it was made February 8, 1950.

Q. When was the bond due? A. Due May 1, 1949. These were bonds that were in default. I mean, they are traded in on the stock exchange every day.

Q. Those bonds were in default, did you say? A. Yes.

Q. What coupons were attached to the bonds when you received them? (1171) A. It says here on May 1, 1933 and subsequent coupons attached, SCA.

Q. That is what SCA means, subsequent coupons attached? A. Yes.

Q. So the coupons went all the way back to 1933, did they, attached to the bonds, from that notation? A. Yes.

Q. Does it say when in 1933—they were due twice a year, weren't they? A. It says here payable May 1st and November 1st.

Q. I think, if I am wrong you correct me, somewhere yesterday or the day before you testified that you did not know where you could check bonds, any place you could check them; is that correct? A. What do you mean

by checking bonds? We check the market value on the telephone, yes.

Q. Where? A. At our brokers.

Q. Are bonds in default as good security as bonds not in default? A. Yes.

Q. They are. (1172) A. Just exactly the same according to their market value.

Q. What does it mean when a bond is in default? A. They are not paying interest.

Q. So that kind of bond is just as good for security purposes as bonds paying interest? A. Just as good for collateral purposes as any—in any bank in New York City.

Q. Don't you know as a fact if you really wanted to check those bonds you could have called the Missouri Pacific Railroad? Couldn't you? A. We had no practice of checking bonds with the Missouri Pacific Railroad or any other place.

Q. Isn't it a fact, Mr. Miller, that your relationship with Mishel was so lucrative that you didn't care, first of all, if he put up security, secondly, if he did put up security what kind of security it was? A. That is absolutely untrue.

Q. There isn't a word of truth in that, is there? A. Not a word of truth in it. This particular security is very good.

Q. You have testified that you know Irving (1173) Luria? A. Yes.

Q. He is still a depositor at your bank? A. Yes.

Q. Now have you——

Mr. Rosenblum: I did not get the name that you mentioned.

Mr. Hallinan: Irving Luria.

Mr. Rosenblum: I was talking to Mr. Perry.

Q. You have testified that you recall that it was Mr. Luria who brought Mr. Mishel into the bank? A. Yes.

Q. Now when he brought him in you knew exactly what the relationship between Mr. Luria and Mr. Mishel was, didn't you? A. No, I did not.

Q. Didn't you know as a fact, Mr. Miller, that they at that time were engaged in a black market operation pertaining to perfume? A. No.

Mr. Hallinan: May we have these marked, please?

(Marked Government's Exhibits 51, 52 and 53 for identification.)

(1174) Mr. Hallinan: I want to step up to the bench just for a minute, please.

Mr. Rosenblum: Me?

Mr. Hallinan: Yes, you, Mr. Rosenblum.

Mr. Rosenblum: Don't be so assertive. You just say "Yes."

Mr. Hallinan: I am——

Mr. Rosenblum: Never mind.

(The following proceedings took place at the bench out of the hearing of the jury.)

Mr. Hallinan: I haven't mentioned this before because in most trials I think it hardly worth mentioning, but since Mr. Rosenblum the other day did point out something, that I was grimacing to the jury, I want to point out for the last ten minutes Mr. Rosenblum has been smiling, shaking his head in disgust during these questions in the open presence of the jury. Further, which I did not point out before, almost the entire time that the witness Mishel was on the witness stand Mr. Rosenblum was shaking his head and going tsk, tsk, tsk.

Mr. Rosenblum: I haven't been.

Mr. Hallinan: I would like the record——

Mr. Rosenblum: But if you look at the (1175) record you will see he says, "Now, Mr. Witness, raise your voice." Then he takes this thing and throws it on the desk. I don't grimace at all. You can see me because I am in front of you, and I am very careful.

The Court: These things can happen without thought, especially as the trial drags on. Just avoid any demonstration like that.

Mr. Rosenblum: I haven't watched my people, but I don't think so. But I can't see what they are doing. As far as myself, I know——

The Court: Several days ago, the only instance I noticed was Mr. Rooney put on a broad smile about something.

Mr. Rosenblum: He shouldn't have.

The Court: Those things have happened. I have done it myself.

Mr. Rosenblum: I want to say, you see the way Mr. Hallinan even now walks up and throws something if he doesn't like an answer.

Mr. Hallinan: I didn't so indicate.

The Court: You were throwing papers all over on Mr. Mishel's cross-examination.

(1176) (The following proceedings were had in open court.)

By Mr. Hallinan:

Q. Mr. Miller, you testified yesterday, at the close of yesterday's session, about these referral sheets and the relationship of Mishel to those. I show you Government Exhibits 51, 52 and 53—well, withdrawn.

James W. Miller—Defendant—Cross

In connection with the referral sheets were exchange checks ever shown to you in connection what was in for that day? A. The actual checks that came through exchanges? I doubt it.

Q. Were notations made of what was in for the day on the referral sheet? A. Yes.

Q. What kind of notation would it be? A. It is a long list. I mean, I don't remember the exact details of the sheet.

Q. I show you Government's Exhibits 51, 52 and 53 for identification and ask you what they are? A. They are three checks made by Irving Mishel payable to——

Mr. Rosenblum: They are not in evidence, (1177) if your Honor please. I think we have a sufficient description at the moment until they are admitted.

The Court: All right.

Q. Were they exchange items at the Bank? A. What do you mean by "exchange items"?

Q. If they were deposited in the Pennsylvania Exchange Bank in Luria's account, they would be charged off Mishel's account as exchange items, wouldn't they?

Mr. Rosenblum: I object to the form of that question.

Mr. Hallinan: He said, "What do you mean?" I am telling him what I mean.

Mr. Rosenblum: If something is offered. I would like to see what is shown the witness.

Mr. Hallinan: They are not offered yet.

The Court: I assume he is trying to lay a foundation for the offer.

Mr. Hallinan: Precisely.

The Court: You can ask him.

Mr. Rosenblum: I object to the form of the question.

The Court: I will let the question stand. It does not need to be answered yes or no. Qualify your answer as you see fit.

(1178) The Witness: What is the question?

The Court: Read the question.

(Question read.)

A. Well, we are getting mixed up on terms, Mr. Hallinan. We don't call these exchange items. Exchange items are items that come to us through the exchanges. These we call house items.

Q. In the referral sheet, did the referral sheet reflect what was charged off to the account on that particular morning? A. No, it had nothing to do with what was charged off on the account. It was items that were not paid on the referral sheet and house items were not listed on the referral sheet.

Q. Well, what was the purpose of the referral sheet, again? A. If you want to take the time, it is quite a little explanation. We went over it yesterday. The purpose was that when the items come in from the exchanges, from the Federal Reserve Bank, in the morning, they go to the bookkeeping department, they are sorted out according to accounts. The bookkeepers then post them on the individual ledgers for the respective accounts that the checks are made (1179) out to. When they come across a check which would overdraw the account——

Q. All right, just stop there. When they come across a check that would overdraw the account, how would they know whether or not the account was going to be overdrawn unless they took into consideration a house item that was going to be charged off to the account on that day? A. They didn't.

Q. They did not take house items into account at all?

A. No. The way that that was covered, when a house item was deposited or paid, the teller who took that, if it was a check that was paid, he would transmit that information to the bookkeepers over the TelAudograph and they would mark it on the ledger just with a pencil "Hold a thousand dollars" or "Hold $300" or whatever it is. So when they posted the checks from the balance shown on the ledger sheet, they would deduct whatever amount was written alongside to be held for the tellers.

Q. Was the referral sheet made out after that operation? A. Oh, yes. It wasn't made out until late in (1180) the afternoon.

Q. What was not made out until late in the afternoon? A. The referral sheet.

Q. Then, in effect, it would reflect the state of the account taking into account these house items, wouldn't it? A. Yes.

Q. Those are checks of Irving Mishel drawn on the Pennsylvania Exchange Bank, aren't they? A. Yes.

Q. Did you ever see those checks before? A. No, I don't think so.

Q. Do you recall at any time having those checks called to your attention by either Mr. Luria or Mr. Mishel? A. No, I don't think so.

Q. Did you ever discuss with Mr. Luria or with Mr. Mishel what their relationship was? A. No.

Mr. Rosenblum: Your Honor, may I see what was shown to the witness?

Mr. Hallinan: No, he may not see.

Mr. Rosenblum: It was shown to the witness, (1181) if your Honor please. I think I am entitled to see anything that is shown to a witness.

If you want to keep them, go on and keep them.

The Court: It is always a sign that the first week of a trial has passed.

Go ahead.

By Mr. Hallinan:

Q. Now, the matter of the stiff accounts which you have testified to. I am going to, rather than refer to the record, try to make it quicker, Mr. Miller, by summarizing your testimony, and if I am wrong in any particular you call it to my attention.

I think you testified—and there has been other testimony here—that ordinarily an opening account sheet is the first document filled out.

Mr. Rosenblum: Mr. Hallinan, would you mind letting me look at the witness?

Mr. Hallinan: I am sorry.

Q. The opening account sheet is the first document filled out and then the signature card is filled out, and I think you further testified that that portion of the signature card or the opening account sheet which reads "Introduced by" merely means, as you say, (1182) that the officer's initials or name—I think in most cases initials—would go in who got credit for the account.

Am I right thus far? A. Yes.

Q. But you also claim that that does not necessarily mean that that is the person who physically opened up the account? A. That's right.

Q. And that "opened by" would have next to it the initials of the person who physically handled the opening sheet or the signature card in the mechanics of opening physically the account; is the correct? A. It should have it, yes.

Q. I show you Government's Exhibit 44 in evidence and ask you what signature card was that? What account was it for? A. I. Mishel, Special.

Q. Whose initials does it have next to "Introduced by"? A. J. W. M., my initials.

Q. It is not actually your initials, but it is typewritten in? A. It is typed.

(1183) Q. Next to "Opened by" are what initials? A. J. J. B.

Q. And they stand for what? A. Brennan.

Q. Now I show you Defendant's Exhibit K for identification and ask you what that is? A. That is a signature card of the Mishel Wine & Liquor Corporation.

Q. And what is Defendant's Exhibit M for identification? A. Signature card for the Berkshire Wine & Liquor Company, Special.

Q. And Defendant's L for identification? A. This is a signature card for the Mishel Wine & Liquor Corporation.

Q. And Defendant's N—take them both at the same time—and O for identification?

Mr. Rosenblum: What are the last two?

Mr. Hallinan: N and O.

A. These are signature cards for the account of Helen Mishel.

Mr. Hallinan: The Government will offer Defendant's Exhibits K, L, M, N and O.

Mr. Rosenblum: If you have photostats of (1184) these forms, I have no objection to their going in. Maybe we can save time.

Mr. Hallinan: No, I don't have.

Mr. Rosenblum: No objection, your Honor.

The Court: Received.

(Defendant's Exhibits K, L, M, N and O for identification received in evidence as Government's Exhibits 54, 55, 56, 57 and 58.)

By Mr. Hallinan:

Q. I have gone over 44 with you, Mr. Miller. 43 in evidence is an opening account sheet, is it not? A. It is.

Q. And next to "Introduced by" it has what initials? A. J. W. M.

Q. And over on the right hand corner it has what? A. J. J. B.

Q. What would that indicate to you, looking at this opening account sheet? A. That he opened the account.

Q. And going back to 44 for a minute, that is also what "Opened by J. J. B." would indicate to you on the signature card, which is Government's Exhibit 44? (1185) A. Yes.

Q. I show you 54 in evidence and ask you if this is a signature card for Mishel Wine & Liquor? A. It's the signature card for the account of Mishel Wine & Liquor.

Q. And Government's Exhibit 55 is also a signature card for Mishel Wine & Liquor? A. Yes.

Q. Next to "Introduced by" are the initials "J. W. M." They stand for your name; right? A. Yes.

Q. And next to "Opened by" are the initials "J. J. B." A. Yes.

Q. They stand for Mr. Brennan again? A. Yes.

Q. Once again, this would indicate that you got credit for the account but that Mr. Brennan actually physically opened the account; is that right? A. That's what it should reflect, yes.

Q. Do you have any doubt that that is what it does reflect? A. Well, not being familiar with the actual transaction itself, I can only judge from what is on (1186) the cards.

Q. And Government's Exhibit 55, which is the Mishel Wine & Liquor signature card, would that indicate—the initials J. W. M. next to "Introduced by" that you got credit for the account? A. Yes.

Q. And that it was opened by J. J. B., Mr. Brennan? A. Yes.

Q. And both initials are on there; is that correct? A. Both initials are on there.

Q. Government's Exhibit 56 is the Berkshire Wine & Liquor Company, Special. What does it have next to "Introduced by"? A. J. W. M.

Q. What does it have next to "Account opened by"? A. J. J. B.

Q. Mr. Brennan, correct? A. Yes.

Q. That once again would indicate that you got credit for it, that Mr. Brennan physically opened it; is that correct? A. That's what it should reflect, yes.

Q. Are all these records wrong, do you think? (1187) A. I don't know. All I want to point out is I was not there at the moment these cards were prepared, so I can only tell you—testify to from what is on the cards, not from any personal knowledge.

Q. Is it your experience that the records were pretty accurately kept at the Pennsylvania Exchange Bank? A. Pretty accurately kept, yes.

Q. Government's Exhibit 57 is the signature card for Helen Mishel, is it not? A. Yes.

Q. Are your initials next to "Introduced by"? A. Yes.

Q. And R. H. L., that is Mr. Littlefield, is it, next to "Opened by"? A. Yes.

Q. Once again, that would indicate that he physically opened it and that you got credit for it; is that correct? A. From the card, that is what it indicates, yes.

Q. And is this a signature card, Government's Exhibit 58? (1188) A. It is a signature card—it is a duplicate of the other one.

Q. There is certain matter crossed out; is that correct? A. Yes.

Q. And with additional information on the bottom? A. Yes.

Q. And that has the initials "Introduced by J. W. M." and "Opened by R. H. L."? A. That's right.

Q. And that is Mr. Littlefield, is it? A. Yes.

(1189) Q. Mr. Miller, I show you Government's Exhibit 10 in evidence and I ask you why there is no initial next to "Opened by" in the signature card of Thomas Young? A. I couldn't tell you. I did not prepare the card.

Q. Isn't it precisely because, Mr. Miller, you foresaw this very day and you planned at that time, as you have been here, being able to state that since your initials were not on or next to the "Opened by" that you knew that you could claim, as you have been here, that you got credit for this account but you know nothing of this account? Isn't that precisely the reason why there are no initials next to "Opened by"? A. It is so ridiculous, all I can say is no.

Q. I show you Government's Exhibit 11 for identification and I ask you why there are no initials next to "Opened by" in the John Case signature card? A. I did not prepare the card so I couldn't tell you. My initials are on there as introduced by me.

Q. Do you know anything about a man by the name of John Case? (1190) A. No.

Q. Did you ever meet John Case? A. Not to my knowledge, no.

Q. Did you ever hear the name John Case? A. We talked about him here recently. I don't recall.

Q. Apart from this, have you ever heard of him? A. I don't recall, no. We had thousands of accounts.

Q. Do you take any interest, or did you take any interest in the accounts for which you got credit? A. If they developed into borrowers' accounts I took a particular

interest; otherwise they went right into the files and were handled like every other account.

Q. Did you ever discuss the John Case account with Irving Mishel? A. No.

Mr. Hallinan: Did your Honor want to adjourn at 12.30?

The Court: If this is a good time. We will adjourn now. Come back at 1.45.

(Recess to 1.45 p. m.)

(1191)

AFTERNOON SESSION

JAMES W. MILLER resumed.

Cross examination continued by Mr. Hallinan:

Mr. Hallinan: May we have these marked, please.

(Government's Exhibits 59, 60 and 61 marked for identification.)

Q. Mr. Miller, I show you Government's Exhibits 59, 60 and 61 for identification and ask you what they are? A. These are opening sheets for three accounts.

Q. What three accounts? A. S. H. Newman, Jack Feinman, Frank Williams.

Mr. Hallinan: The Government will offer these in evidence.

Alternate Juror No. 1: Your Honor, I think I will have to go, if you don't mind.

The Court: We will take a brief recess.

(Alternate Juror No. 1 leaves courtroom.)

(Pause.)

The Court: Is there any objection on the documents?

Mr. Rosenblum: No.

(1192) The Court: All right, I will receive them.

(Government's Exhibits 59, 60 and 61 for identification received in evidence.)

The Court: Have you any more you can mark now without being premature?

(Pause.)

The Court: Mr. Rosenblum, could I see you for a second?

Mr. Rosenblum: Surely.

(Mr. Rosenblum approaches bench.)

The Court: I am going to circulate the exhibits in her absence and show them to her when she comes in. Have you any objection?

Mr. Hallinan: Yes, because I have more testimony to go in. I am not going to circulate them. I will just point out certain things on them.

The Court: Why don't you let them see them now and then you can point out your things later?

Mr. Hallinan: Some are not in evidence yet, your Honor.

The Court: Three of them are.

Mr. Hallinan: Yes, but I want more testimony with respect to those.

The Court: Come up here, please.

(1193) (Mr. Hallinan approaches bench.)

Mr. Rosenblum: I have no objection to their being circulated now. I understand your Honor will

show them to the alternate, No. 1, when she comes back.

The Court: All right.

Mr. Rosenblum: No objection.

Mr. Hallinan: I am just trying to figure how to best keep these in order.

The Court: Just run them along one at a time.

Mr. Rosenblum: I suggest that no comment be made at this time unless the juror be present.

The Court: You send along the exhibits that don't need any explanation.

Mr. Rosenblum: Are these exhibits which I haven't seen?

Mr. Hallinan: Oh, of course not. They are in evidence.

The Court: These last three exhibits.

Mr. Hallinan: They are all in evidence.

Mr. Rosenblum: 59, 60 and 61, these are all in evidence.

Mr. Hallinan: Yes (handing to the jury).

(1194) (Alternate Juror No. 1 returned to the jurybox.)

The Court: You let me know if you feel the least bit ill.

Alternate Juror No. 1: I am sorry.

The Court: We have a whole lot of exhibits for you to read, so you won't think we weren't working while you were trying to feel better.

(Nurse enters courtroom.)

The Court: Why don't you go into the robing room if you want to talk to her. We will take a brief recess now.

(To Jury) I will give you your room back.

(Short recess.)

(Jury in box.)

The Court: All right, Mr. Hallinan.

By Mr. Hallinan:

Q. Mr. Miller, I think I had asked you if, with respect to Government's Exhibit 10, you knew Thomas Young and you said you don't know? A. No, I don't recall having seen him.

Q. Did you ever hear the name? A. Yes.

Q. Just from the witness stand, you mean? (1195) A. Mostly, yes.

Q. Where else did you hear it? A. In discussing the case with Mr. Rosenblum.

Q. And Government's Exhibit 11 is the signature card of John Case. Did you say that you didn't know John Case, you had heard of him here for the first time? A. No, I did not.

Q. I am sorry. A. I said I didn't recall the name but we had discussed this with Mr. Rosenblum.

Q. If one were to come into the bank and look at Government's Exhibit 10, the Thomas Young signature card, would he know who the account was opened by? A. No.

Q. And is that the same for Government's Exhibit 11, the John Case signature card? A. Yes.

Q. Now, Government's Exhibit 59 is an opening account sheet of S. H. Newman. Do you know that gentleman? A. No.

Q. Have you ever heard of him before apart from discussing it for this case? (1196) A. I don't recall the name. We had a number of Newmans. I don't remember anything specific about this particular one, no.

Q. And Government's Exhibit 60 is an opening account sheet for Jack Feinman. Have you ever heard that name before apart—I am excluding from my questions discussing it for this case or what you have heard from the witness stand.

Have you ever heard that name before? A. I don't recall any particular reference to the name, no.

(1197) Q. What about Government's Exhibit 61, which is the Frank Williams opening account sheet? A. I don't recall having heard anything in particular reference to this name, no.

Q. Look at Government's Exhibit 59. From looking at that could one tell who opened that account? A. Not unless they knew the handwriting.

Q. Whose handwriting is that? A. I couldn't say for sure.

Q. And 60, the Jack Feinman opening account sheet, would one know who opened that account? A. Not unless they knew the handwriting.

Q. Do you recognize the handwriting on that sheet? A. No, I don't.

Q. What about 60, the Frank Williams, would someone know who opened that? A. Not unless they knew the handwriting.

Q. Do you recognize the handwriting on there? A. No. It appears to be the same as on the Newman account. My guess would be that it is Mr. Littlefield's handwriting.

Q. You got credit for these five accounts that I have just gone over with you, did you not? (1198) A. I only saw three there.

Q. Oh, I am sorry. Thomas Young, John Case, Williams, Feinman and Newman. A. Yes.

Q. Did you ever discuss these five accounts with Irving Mishel? A. Not as far as I can remember, no.

Q. I think you have already testified that apart from customers that you might loan money to you did not take an interest in these other customers that you got credit for; is that correct? A. I didn't say I didn't take an interest. I said I didn't take any particular interc.

Q. Well, what interest did you take in these people? A. The same interest I take in the customers of the bank.

Q. What interest was that? A. To see that they all got good service and attention and the facilities of the bank were made available to them.

Q. Did you see that these five we have just discussed got good service? A. Not in particular, no.

(1199) Q. Do you remember anything about that? A. No, I don't.

Mr. Hallinan: May I have this marked?

(Marked Government's Exhibits 62 and 63 for identification.)

Q. I show you Government's Exhibits 62 and 63 for identification and ask you what they are? A. 62 is a cashier's check dated October 10, 1949, cashier's check of the Pennsylvania Exchange Bank. No. 63 is an average balance card from the records of the Pennsylvania Exchange Bank.

Q. An average balance card for whose account? A. Daniel Robino.

Q. What is the name on the check? A. Daniel Robino.

Q. Did you know what that check was issued for at the time it was issued? A. No.

Q. Do you now know? A. Yes.

Q. What do you now say it was issued for? A. It was issued in payment of securities sold in the bank.

Q. Now do you recall, or do you now know from (1200) checking records, I think you testified about this check yesterday, was a broker employed in this particular bond? A. From the records that I have looked at recently I find that there was a broker used.

Q. Would you tell us the normal procedure followed when a person brought in a bond and the Pennsylvania Exchange Bank would send it to a broker, from the time

the person brings in the bond until the time he gets a check for it, what happens? A. When he comes into the bank he would go to one of the officers, chief clerk or manager, and arrange to have the bond sold. He would sign a sales order in the book. They had a special book for that. Then after the transaction was completed in the bank he would either get a cashier's check for it or he would get the proceeds credited to his account.

Q. What was the average amount charged to a customer for such a transaction as this, assuming the bond was a $5000 bond? A. We had a scale. I don't recall. I would say maybe $2.50, $5.

Q. From checking the records you now know that $50 was the amount charged for this transaction by the (1201) bank? A. I do, yes.

Q. Would you say that is extraordinarily high? A. Well, I would say it is an extraordinary charge, yes.

Q. Would the check be issued before the arrangements were made with the broker? A. No.

Mr. Hallinan: May I have this marked as one exhibit, please.

(Marked Government's Exhibit 64 for identification.)

(1202) Q. Mr. Miller, are you aware of the procedure at the brokerage house? By that I mean that the contract would be made on one date and the check issued some time thereafter on another day. A. Yes. There is a procedure there for what is called regular delivery. I think the transactions are cleared maybe twice a week; and then, of course, there is a procedure for what is called a cash delivery.

Q. I show you Government's Exhibit 64 for identifica-

tion, and keep that place. I ask you what that is? A. The book or the sheet or which?

Q. The entire document, first of all. A. The whole thing?

Q. Yes. A. This is the book in which customers give the bank orders for the purchase and sale of securities.

Q. The particular page that we have opened there, does that reflect the Daniel Robino transaction? A. You must have it open to the wrong place. I don't see anything like that here.

Q. Does that page (indicating)? (1203) A. Yes. This is the customer's original order.

Q. Can you tell us when the arrangements were first made with the brokerage house from that? On the back of that page, are there two slips attached? A. Yes. There are three slips. One is a duplicate of the other.

Q. Does one reflect when the arrangements were made, the contract with the brokerage house? A. Well, I suppose it would be the date—it says here, "Contract date October 10, 1949. Settlement date October 11, 1949."

It is printed on here.

Q. What? A. It is printed, stamped by the broker.

Q. What does the settlement date mean on there? A. That is the date for regular delivery.

Q. Of what? A. Of the securities.

Q. Had the transaction been completed with the brokerage house in this case before the check was issued by the bank, Pennsylvania Exchange Bank? A. I can't quite follow what you are getting at.

Q. What transaction does the Pennsylvania Exchange (1204) Bank, in a case like this, limiting it to this, have with the brokerage house? A. Somebody phones the broker and gives him the order, and then the securities are either sent down, or, if it is a cash delivery, they are sent up.

Q. What do you mean by "cash delivery"—cash from

the brokerage house to the bank? A. No, we get a check. We call it a cash delivery. It means the transaction is completed the same day.

Q. Does that reflect when the Pennsylvania Exchange Bank got the check from the brokerage house? A. I don't see anything here that reflects that. Maybe I haven't looked close enough.

(Referring to document.) No, I can't tell from these records when the bank got the check.

Q. But you say the settlement date on there, October 11, does not mean the day on which the check was issued by the brokerage house? A. No.

Q. Did I ask you if you are now aware that $50 was charged by the bank for this transaction? A. Yes, you asked me that question.

Q. What was your answer? (1205) A. I said yes, I knew it.

Q. Mr. Littlefield is dead now, isn't he? A. Yes.

Q. Does your signature appear on the Daniel Robino check? A. Yes, this is my signature. This is the signature I told you the other day was affixed to the check subsequent to the time it was issued.

Q. This is also the check that I think you recall Mishel testified was for the bond that he called you on the telephone about and made arrangements; is that correct? A. This is the transaction that I presume he was referring to.

Q. You know that it was, don't you? A. I presume from what he said, yes.

Q. Can you tell me from Government's Exhibit 64 again what the fee from the brokerage house was to the bank? A. The brokerage house deducted $1.65 commission.

Mr. Hallinan: I should like to offer Government's Exhibit 64, but just this one page. So I am going to separate it from the remainder.

The Court: Can't you do it with a paper clip?

(1206) Mr. Hallinan: Pardon?

The Court: Can't you hold the rest of it together with a paper clip? Nobody will be looking at it.

Mr. Hallinan: We might scotch tape it.

Would your Honor want me to mark another exhibit number? I do not think it is necessary.

The Court: We will call the page 64-A. That is what he is offering, 64-A.

Mr. Hallinan: The Government offers 62, 63 and 64-A.

Mr. Rosenblum: I have no objection to the check.

(Government's Exhibit 62 for identification received in evidence.)

(1207) Mr. Hallinan: Well, I will ask a few more questions while he is doing that.

Q. I think you have testified, Mr. Miller, with respect to this check in this particular transaction we are on now that you countersigned the check the following day, is that correct? A. At a time subsequent to the day it was issued, yes.

Q. There were officers empowered to countersign checks in the bank at that time, were there not? A. I really don't recall.

Q. Let me ask you specific questions then. Was Mr. Reedy empowered to countersign this kind of a check? A. Yes.

Q. All right. During this period of time on the date this check was issued? A. Would you give me the date again?

James W. Miller—Defendant—Cross

Q. October 10. A. What year?
Q. October 10, 1950—1949.

Mr. Rosenblum: 1949.

A. Mr. Reedy was not stationed at the 48th Street office at that date.

(1208) Q. Was Mr. Gallagher at the 48th Street branch? A. Yes.

Q. Was Mr. Gallagher on October 10, 1949 empowered to countersign checks? A. No, sir.

Q. He was not? A. He was not.

Q. Was Mr. Vassil empowered to coutnersign checks on that date? A. In conjunction with my signature, yes.

Q. Was Vassil at the 48th Street branch at that time? A. Yes.

Q. Was Mr. Brennan empowered to countersign checks at that time? A. Only with my signature on the check.

Q. Only with your signature? A. Yes.

Mr. Hallinan: I should like to call the jury's attention to this—63—rather than circulate these two documents, your Honor.

Q. Just one further question, Mr. Miller. I see that your signature is above "Assistant Vice-President." Was that your title at that particular (1209) time? A. No. My title was president.

Q. Was there an assistant vice-president at the bank at that time? A. Yes. Mr. Vassil was assistant vice-president.

Q. I want you to look at this check again carefully and tell me: You just said that Vassil and Brennan were only empowered to countersign checks with your signature? A. That is correct. You can check that in the bank; anyone there that knows can tell you that.

Q. Have you finished? A. Yes.

Q. What does the printed notation say right under your name? A. Under my name it says assistant vice-president. That wasn't my title.

Q. What does it say under the other? A. Manager.

Q. Then from that printed form were the assistant vice-president and the manager empowered, apart from your signature, to sign and countersign a cashier's check? (1210) A. Not together, no.

Q. Would you say that this check was then made out incorrectly? A. No, it was not. It was made deliberately that way.

Q. With the "Assistant Vice-President" printed down below you mean? A. That is right.

Q. Why was that? A. Because he would sign where it says "Assistant Vice-President," I would sign on the other side. If the manager signed, then I would sign on the other side.

Q. You were president at this time? A. I think that has been established; yes.

Q. And your signature was required if Brennan signed it? A. Yes. I don't think Brennan had any authority to sign any checks at that time.

Q. I don't understand this. Where is the position for the signature of the president? A. This printing is to indicate when the manager or the assistant vice-president signed, the line that they are supposed to use. The line that they didn't (1211) use I used.

Q. In other words, those notations down below don't mean anything? A. Why, I just told you what they meant. They mean when the manager signs he signs on the line marked "Manager." When the assistant vice-president signs he signs on the line marked "Assistant Vice-President." I sign in the blank space.

Q. That is all I asked you before. Then an assistant

vice-president and a manager could sign and countersign a check like that without your signature on it? A. No, I have been telling you that they couldn't.

Q. I ask you again, the notations on that are incorrect? A. They are not incorrect, no.

Q. Did you have other checks with other notations on them? A. No, they are all printed this way, all in the 48th Street office.

Mr. Hallinan: Government's Exhibit 62 is a Pennsylvania Exchange Bank cashier's check in the amount of $5,035.22, signed by Mr. Miller and Mr. (1212) Littlefield, issued on October 10, 1949.

Government's Exhibit 63 is a card for the account of Daniel Robino indicating that the account began some time in 1937 and was closed on 1-5-39.

Q. Did you have any knowledge of this account at the bank, Mr. Miller? A. No, I don't recall that account.

Mr. Hallinan: May we have this marked, please?

(Marked Government's Exhibit 65 for identification.)

Q. Mr. Miller, besides being a follower of the opera, did you like art, paintings? A. Yes, I like art.

Q. Do you know very much about it? A. Very little.

Q. Did there come a time when you received a painting from Irving Mishel by Degas? A. There came a time when he came into the bank and wanted to make a loan on some pictures. I told him that we didn't make loans on pictures.

He sent over a painting anyhow, with a list of paintings, and asked if we wouldn't take it up. We didn't do anything because we don't lend on (1213) paintings. That was shortly before he got into trouble. And the painting

was left at the bank, where he sent it, and it is still there today.

Q. Have you seen it there recently? A. No.

Q. How do you know it is still there today? A. Because I asked the manager to look for it, and he found it up in the stockroom.

Q. Did you ever have it at home, Mr. Miller? A. No.

Q. Never? A. No.

Q. How many paintings were there? A. I only recall him sending one.

Q. Is Government's Exhibit 65 for identification a photograph of that painting? A. Well, I don't remember the painting. I am familiar with this picture, that is, I have seen this painting reproduced a number of times. But I couldn't say whether that was the painting he sent over or not. We can call up and ask them at the bank what the picture is. They know; it is there.

Q. Now you discussed yesterday the loans on March 2nd and March 9, 1950. Would you go over those (1214) briefly again for us, please? A. Those are the two loans that were made to the liquor store, I presume you mean?

Q. Yes, Mr. Miller, they are. A. There was a loan of $5,000 made to the liquor store, I think it was Mishel Wine & Liquor, on one date. About a week later, after the executive committee approved him for that $5,000, another loan was made to the liquor store.

Q. I think you testified that the first, having refreshed your recollection from looking over certain records, the first loan was made on March 2, 1950; is that correct? A. That is as near as I remember it, yes.

Q. Before we go any further, would you tell us the procedure for a loan of this type with specific reference to—withdrawn.

Was any corporation empowered to borrow money at your bank? A. What do you mean, any corporation?

Q. Well, it is not a very good question, I agree. Well, let us say the Mishel Wine & Liquor. Did they have to have a resolution on file to make a loan? (1215) A. When a corporation owns an account in a bank they file a resolution. The resolution is a combination authorizing signatures and authorizing the loan, so the initial resolution that they file empowers them to use the account to make loans.

Q. Was there a resolution in the bank when you granted the loan on March 2, 1950? A. There should have been. I couldn't tell you.

Q. Well, let us see if I can refresh your recollection. First of all, you have told us that you didn't know that Mishel had sold this Mishel Wine & Liquor Corporation, is that correct? A. Not until after the loans were made, yes.

(1216) Q. But when the loan was made you didn't know it? A. No.

Q. I show you Government's Exhibit 55—did you know his home address, by the way? A. I suppose it's in the records. I don't recall it.

Q. You don't recall it? A. No.

Q. Was it up on the Grand Concourse somewhere? Do you have that kind of recollection? A. Bronx.

Q. I show you Government's Exhibit 55 in evidence. Is there written in ink at the bottom "Closed" on a certain date? A. Yes.

Q. What date? A. 1-9-50.

Q. Is that the Mishel Wine & Liquor account? A. Mishel Wine & Liquor Corporation.

Q. I show you Government's Exhibit 54 in evidence and ask you to read the matter on the lower righthand corner. A. It says, "New cards and resolution filed (1217) 3-3-50."

Q. That is March 3, 1950, is it not? A. That's right.

Q. From looking at those cards, would that indicate that a resolution was not on file on March 2, 1950, when you granted the loan? A. Not necessarily, no. This card—he may have filed the resolution on March 2 and the card was made up the next day, and the girl that made up the card just put the date on it she made it up.

Q. Do you know that to be the fact? A. No, I don't. As a matter of fact, the resolution should have been on file. It is up to the loan tellers to check. It is not my personal responsibility to keep every little record in the bank.

Q. But you testified that you checked the various papers in granting this loan, did you not? A. No, I did not.

Q. What did you do in granting the $5000 loan immediately? A. I looked at the statement, talked to him and felt that from our experience with him he was entitled to the $5000 loan.

Q. You don't mean that, Mr. Miller, do you, (1218) from your experience with him? A. Yes.

Q. You knew from your experience with him he did not have any integrity at all, didn't you? A. I did not.

Q. Mishel was a fine, reliable business man as far as you are concerned; is that right? A. He was a good business man, yes.

Q. Will you look at I think it is 55. Was there an address on that for him? That was the one that was closed 1-9-50, as indicated on the card; is that right? A. Which number did you give me?

Q. I think it is 55. A. And what is it you want me to read from there?

Q. Is there typewritten in on the top an address? A. Yes; 2960 Third Avenue, New York, New York.

Q. Is there pencilled in above that another address? A. It was changed, I suppose, at some subsequent date. It says 930 Grand Concourse, Bronx.

(1219) Q. You know exactly when it was changed, don't you, Mr. Miller? A. I do not, no.

Q. You knew all along that Mishel didn't own this corporation when he got the loan, didn't you? A. I did not, Mr. Hallinan.

Mr. Hallinan: May we have this marked, please.

(Marked Government's Exhibit 66 for identification.)

Q. I show you Government's Exhibit 66 for identification. I ask you if you recognize this as coming from the bank? A. Yes.

Q. Do you recognize the handwriting on there? A. Yes. It is mine.

Q. That is an undated memo, isn't it, Mr. Miller? A. Undated memo, yes. If it is in its proper place in the file, we might determine the date.

Q. I will be patient with you, Mr. Miller. I won't move to strike that, but would you just answer my questions, please?

Mr. Rosenblum: I object to the statement (1220) by Mr. Hallinan, being patient with the witness.

The Court: I will let it stand.

Mr. Hallinan: The Government offers Government's Exhibit 66 in evidence.

(Mr. Hallinan hands document to Mr. Rosenblum.)

Mr. Hallinan: No objection?

Mr. Rosenblum: No.

(Government's Exhibit 66 for identification received in evidence.)

James W. Miller—Defendant—Cross

Mr. Hallinan: May I read this to the jury, if your Honor please?

The Court: All right.

(Mr. Hallinan reads Government's Exhibit 66 to the jury.)

Q. Does that mean secretary-treasurer? A. Yes.

(Mr. Hallinan continues reading.)

Q. That is January 12, 1950, the 1-2-50 on there? A. Yes.

Mr. Rosenblum: 1-12.

Mr. Hallinan: I am sorry; 1-12-50, yes.

Q. You say some time thereafter you heard, you say, Mishel had sold this corporation and you called (122) him down to the bank; is that correct? A. That's correct.

Q. And you asked him to put up some security? A. Yes. I asked him to pay the loan first.

Q. Mr. Miller, isn't it a fact that you had the bank at about that time debts of Mishel's in the amount of about $30,000 that were not secured? A. I don't think so.

Q. What were they? A. Well, I would have to have the records to add it up, but I don't believe it was that figure at that time.

Q. You testified on direct that the high point of Mishel's indebtedness to the bank was about a little over $30,000, did you not? A. I did.

Q. When was that high point? A. That was, I believe, in the middle of 1949.

Q. How much had it been reduced by the time you granted these loans? A. I don't recall. Otherwise I could have told you the exact amount.

Q. Had it been reduced at all? A. I believe it had.

(1222) Q. And what is your belief as to how much it had been reduced? A. I would have to look at the credit file. I can't carry all those figures in my head.

Q. Was Mr. Mishel still indebted to the bank in some amount when you granted the loan on Mishel Wine & Liquor? A. Yes.

Q. Isn't it a fact that you asked Mishel to bring in some kind of securities and you weren't too concerned about what kind they were or where they came from because you had so many unsecured loans of his at the bank and the bank examiners were due shortly and you did not want the situation to look too bad? A. That is ridiculous, Mr. Hallinan.

Q. Mr. Miller, isn't it a fact that on April 28, 1950, the bank examiners did visit the Pennsylvania Exchange Bank? A. I couldn't remember the date. I would have to look at the files.

Q. How often would the bank examiners visit as a practice——

Mr. Hallinan: Withdrawn.

(1223) Q. Did they have a practice for visiting banks? A. Oh, yes.

Q. How often? A. Twice in every 18 months.

Q. And you don't recall that on April 28, 1950, the bank examiners did visit the Pennsylvania Exchange Bank; is that correct? A. What is the date now again?

Q. April 28, 1950. A. I don't believe they did, because they were in on November 2 of 1949. So that would be five months later you are speaking of. I don't recall any instance in the quarter of a century that I was there that they came in five months apart.

Q. Let me see if I can refresh your recollection on that. What about seven months? A. Seven months it could be. Twice in 18 months.

James W. Miller—Defendant—Cross

Q. Wasn't it a fact that the examiners came back again on October 20, 1950? A. It is possible. I can't remember the dates.

Q. Both those dates you could check from the records of the bank, couldn't you, to refresh your recollection? (1224) A. Yes.

Q. Didn't you testify that when you granted the loan you wanted 20 per cent of the loan in the account? A. No, I didn't testify——

Q. You tell us what you did say about the 20 per cent. A. I said it is customary for a depositor to keep 20 per cent of his loan as a balance.

Q. What do you mean for the customer to keep? For the bank to require him to keep that much? A. For the customer to keep a balance of 20 per cent of his loans, yes. That was a requirement.

Q. Of the bank? A. Of all banks.

Q. I know, Mr. Miller. I am just talking to you about the Pennsylvania Exchange Bank. A. Yes, it was a practice of ours.

Q. Let us get this clear. Do you understand I am only talking to you about the Pennsylvania Exchange Bank? A. Yes. I said it was a practice in our bank.

Q. Weren't you aware, Mr. Miller, that the balance in the Mishel Wine & Liquor account on (1225) December 27, 1949, was $4.92? A. In that particular account?

Q. Yes. A. No, it has never come to my attention.

Q. Weren't you aware at that time that on June 31, 1950, the balance in the account was $19.55? A. On what date, Mr. Hallinan?

Q. June 31, 1950. A. There is no June 31.

Q. I think you are right. It must be June 30.

On June 30, 1950, was there a balance of $19.55? A. I couldn't tell you about the balances, Mr. Hallinan, because the only information that I got on the balances of a customer who was making an application for a loan was

the balances that were posted in the credit file. They were usually about a month late, but I never went to the ledgers to find out what the customer's balance was. I took whatever figures were reflected in the credit file.

Q. Did you know that the records of the bank, Mr. Miller, reflected on February 27, 1950, there was a balance in the Mishel Wine & Liquor account of $17.35? (1226) A. No, I don't know that.

Q. Weren't you aware then and now, Mr. Miller, that on March 31, 1950, there was a balance in the Mishel Wine & Liquor account of $2.53? A. No, I was not aware of that.

Q. Mr. Miller, this testimony about 20 per cent being in the account——

Mr. Hallinan: Withdrawn.

Q. That 20 per cent rule didn't pertain to Mishel, did it? A. Yes, it applied to everybody, but the money didn't have to be in the one particular account. If a customer had five accounts, we would lump all the balances together and give him credit for his balances.

Q. Let us pursue that for a minute. You mean to tell me if a person had a corporate account in the bank you could look to another corporate account in that bank to satisfy loans out of the first corporate account? A. No, Mr. Hallinan.

Q. What do you mean? A. I mean that he would get credit against his 20 per cent for the other accounts that he maintained (1227) in the bank.

Q. You mean the 20 per cent would be drawn from all the accounts, not just one? A. We don't draw anything. We just use that as a figure.

Q. I know, as a basis? A. Yes.

Q. The 20 per cent, then, might represent money in five

accounts and not just the account that was getting the loan? A. That's correct.

Q. Now, that is what I ask you again. Why did you use that as a basis? Could you look to another corporate account to satisfy the loan of a distinct corporate loan? A. No. The 20 per cent balance requirement had nothing to do with looking for payment.

Q. What did it have to do with it? A. It was to give us a working balance on the account.

Q. For what purpose? A. So that we had some balance to make some money on.

Q. Now, I think yesterday, Mr. Miller, you (1228) testified that you called, as you have repeated it here today, Mishel into the bank when you found out, as you say, when you first found out, that the corporation had been sold and Mishel was no longer the owner; is that right? A. Yes.

Q. Now I read from the record at page 1119, in the middle. This is part of an answer that you gave.

"I said that didn't satisfy me. I said, 'You had no right to come in here and say you owned the store and give us a financial statement and make a loan when you didn't even own the store.'"

At that point you were aware, as you say now, that a gross fraud had been perpetrated upon your bank, weren't you? A. Yes.

(1229) Q. Why didn't you go down to the District Attorney then? A. Because he immediately agreed to put up collateral to cover the loan.

Q. Does that detract from the fraud perpetrated upon the bank, Mr. Miller? A. He said it wasn't a fraud. He gave an explanation which at the time seemed to be reasonable and fitted in with the general idea that I had as to how the State Liquor Authority transferred package store licenses.

Q. The explanation you now say seemed reasonable to you? A. Yes.

Q. I once again read to you your answer from yesterday, Mr. Miller: "I said that didn't satisfy me"— A. Yes.

Q. —"I said, 'You had no right to come in here and say you owned the store and give us a financial statement and make a loan when you didn't even own the store.'"

Which do you mean, Mr. Miller? Did it satisfy you or didn't it satisfy you? (1230) A. It didn't satisfy me, no.

Q. There is no doubt in your mind, either today or then, is there, Mr. Miller, that a gross fraud had been perpetrated on the bank? A. Well, I certainly know it now.

Q. Didn't you know it then? Didn't you say so to Mr. Mishel, as you claimed for the first time, when you became aware of it? A. Yes, I did.

Q. Why didn't you go down to the District Attorney then, Mr. Miller? A. Because he gave an explanation and backed it up with collateral.

Q. Isn't the reason the same as I asked you yesterday, Mr. Miller, because you didn't want to go near the District Attorney with anything about Mishel yourself personally? A. No, that isn't so.

Q. That is absurd, isn't it? A. It certainly is.

Q. Did there come a time when Mr. Mishel, I think you said, brought in a hypothecation agreement? A. Yes.

Q. When he brought it in you were fully aware, (1231) were you not, of what I have just asked you twice, of this gross fraud that had been perpetrated upon the Pennsylvania Exchange Bank? You hadn't forgotten? You were fully aware of it, weren't you, when he brought in the hypothecation agreement? A. Yes, I knew of it.

Q. I show you Government's Exhibit 67 for identification and ask you if this is a copy of that hypothecation

agreement? A. I couldn't tell you. I thought it had been made on our own form.

Q. Does that refresh your recollection? A. No, it does not. But——

Q. Is that a copy of that agreement? A. I don't recall it. I know we got a hypothecation agreement. I thought, though, my memory would be that it would be on our own form. We had printed forms.

Q. Did you go through the records of the bank to see if you could find the original of the hypothecation agreement? A. No.

Q. Does that look like a copy of it? A. I don't recall it, Mr. Hallinan. It could (1232) be.

Q. You don't recall whether that is a copy or not? A. No, I don't.

Mr. Rosenblum: May I see what you showed the witness?

(Mr. Hallinan hands to Mr. Rosenblum.)

Mr. Rosenblum: Thank you.

The Court: I think we will take a brief recess now.

(Short recess.)

Q. Mr. Miller, I think you testified that the committee or the board of directors—or, was it a committee or was it a board of directors that approved the second loan on March 9, 1950? A. Executive committee.

Q. Executive committee. Now, wasn't it a fact that the executive committee was nothing but a rubber stamp for you and Mr. Gallagher? A. No, it was not a fact.

Q. Did the executive committee keep any records, Mr. Miller? A. Yes.

Q. What kind of records? (1233) A. There were minutes of the executive committee meetings.

Q. Did you ever see those? A. Yes.

Q. Are they at the bank now? A. They should be.

Q. Have you seen them recently? A. No, I haven't.

Q. When is the last time you saw them? A. Oh, I would say March 1954. I actually didn't look—never looked at them. They were read at the meetings, so I didn't have to look at the books.

Q. You never actually saw the books then? A. I saw the books were there, but I never took the books and looked through them. The secretary read the minutes out of books.

Q. Now, yesterday you testified that—let me read the question and answer.

Mr. Rosenblum: What page?

Mr. Hallinan: I am sorry. 1099. The second question on the page.

Q. "Was there any occasion when you did procure tickets from him or through him?"

Parenthetically, that is referring to Mishel.

(1234) "A. There was one occasion where one of the directors of the bank called me up one afternoon and wanted to get two tickets for that night for South Pacific, and he said he had to have them, it didn't matter what they cost. So I asked the boys on the platform if they knew anybody who could get two tickets in a hurry. One of the clerks said that Mishel could get tickets, and I told him to get a couple of tickets from him. He got the tickets and paid him for them."

Now, who was the director that called you up? A. Lionel Goldberg.

Q. And how long was he a director? A. A number of years. I can't recall.

Q. And who was the clerk that you spoke with about these tickets? A. I don't recall.

Q. By clerks you include in that tellers? A. No, I used the word interchangeably. Boys on the platform and clerks.

Q. You can't recall who that clerk was? A. No, I can't.

Q. Did Mishel come down personally with the tickets? (1235) A. No; there really were no tickets involved. At that time you didn't get any tickets. You simply got a notice that two tickets were at the box office in a certain name. And I simply told Mr. Goldberg to go to the theatre that the boys told me and ask for the tickets in that name.

Q. Who paid Mishel for the tickets? A. Mr. Goldberg sent the money over. I suppose whoever made the arrangement with Mishel.

Q. You used to get tickets from time to time from Mishel, didn't you, theatre tickets? A. I don't recall any, no.

Q. Would you say you didn't? A. I would say I didn't. I don't recall any.

Q. Now will you tell us briefly, Mr. Miller, what you would do when a known customer would come into the bank to you and want to cash a bond not in his name, step by step, the procedure that you would follow? A. A known customer?

Q. Yes. A. Would come in to me and ask to have a bond cashed? I could have done one of several things. If he was a good customer I would send the bond over (1236) and have it cashed.

Q. Send it over by whom? A. The guard, whoever happened to be on the floor.

(Mr. Rosenblum conferred with Mr. Hallinan off the record.)

Q. Do you understand the question? I am talking about a person bringing in a bond to be cashed not in his name. A. Oh, no.

Q. All right. A. No. I thought you meant that the bond was in his name.

Q. No, it is in a name other than his. A. No.

Q. All right. Where he came to you directly what would you do in a situation like that? A. I would tell him that he has to have the person who is named in the bond, that he must bring them there.

Q. Do you recall cashing the bond for Irving Mishel's wife? A. I don't recall the instance, but I see in the record that there was such a transaction.

Q. Do you recall whether Mrs. Mishel was there (1237) at the time? A. I don't recall, no.

Q. Well, if she weren't, would you have cashed the bond for Mishel? A. I might have.

Q. And have you given us all the steps that you would follow? A. Well, as I can recall them at the moment, yes.

Q. Would you do anything with respect to a bond redemption form? A. No.

Q. I show you Government's Exhibit 32 in evidence and ask you if that is the bond redemption form for a bond in the name of Helen Mishel with your signature above "Identification"? A. Yes, it is.

Q. Did you follow an extraordinary procedure in this particular case? A. No, I don't think I had any set procedure.

Q. You had no set procedure at all? A. No.

Q. Sometimes you would sign and sometimes you would not? (1238) A. Yes, I would say so.

Q. Well, when a person came to you and you would send the bond over with the guard, what would you say to the guard? A. "Take care of this."

Q. And what would you mean by "this"? A. For him to take care of it.

Q. Would you give him the bond? A. Yes.

Q. Would you give him the bond redemption form? A. Yes. Whatever I got I gave to him.

Q. Would you sign the bond redemption form or initial it? A. In this case I signed it, yes.

Q. Would you usually? A. I really couldn't say. I don't—as I say, I had no set procedure.

Q. Why would you sign it in some cases? A. No particular reason.

Q. Just for the exercise of penmanship? A. A good reason.

Q. Are you serious, Mr. Miller, that you would initial it sometimes and not other times in the circumstances I have outlined to you, just at your own whim? (1239) A. Yes. I don't know about whim, but——

Q. If it isn't a whim, give me the reason. A. Because we had no set procedure.

Q. You didn't have much of a set procedure for anything at the bank, did you, Mr. Miller? A. I wouldn't say that, no.

Q. You can't give me a reason why you would have signed that? A. No, I don't recall the incident.

Q. Would you give me a reason why you signed the redemption form when you did? A. No. Maybe to facilitate the transaction.

(1240) Q. Now, directing your attention to the Chernoff bonds, I want you to tell the Court and jury exactly what you remember, everything that you remember as exactly as you can remember it, about the cashing of those bonds, not as you told it later to Sershen but what you just recall now about those events. A. There was an occasion when Mr. Mishel came to my desk with another man and said his friend wanted to cash some bonds, and I asked him who the friend was.

These words I am giving you, I don't want you to understand those are the exact words. I am giving you the idea or the meaning that took place at that time.

He told me that the man worked for—he said he was an oldtimer over in Roth's Restaurant. I asked the man

if these were his bonds and if this was him, pointing to the bonds. He said, "Yes."

I sent them over by the guard and they were cashed.

Q. Did you send over a redemption form? A. Whatever he gave me I sent over.

Q. Wasn't it a standard procedure for a bond redemption form to accompany the bond or bonds? (1241) A. Yes, if the teller, when he got them, there was no redemption form, he would have said something about it, so I assume a redemption form went over.

Q. Do you recall on this occasion the bonds came back? A. No.

Q. So was there a redemption form with them? A. I say I don't recall that the bonds came back, no.

Q. Were the bonds signed in your presence? A. No, they were, I believe, already signed when the man came to me.

Q. Shouldn't the bond ordinarily be signed in your presence? A. No.

Q. Was the bond redemption form signed in your presence? A. I don't recall the form at all.

Q. Did you initial that redemption form? A. No, I don't recall the form at all.

Q. You don't recall anything about a redemption form? A. No. There must have been one there, but I (1242) don't recall it.

Q. You only recall one occasion? A. Clearly, as clearly as I have described, which is not too clear, but it was in another time, yes.

Q. Let us get into the area, then, that is not too clear. Tell us what you remember about that. A. He was in another time.

Q. That is fine. Now you just tell us everything you remember about that. A. I just know he was in another time. I don't know whether it was the time he had this bond that you just showed me or whether it was some other instance.

Q. The bond I what? A. Just showed me.

Q. The Helen Mishel redemption form? A. Yes.

Q. That is all you can remember about that, you don't know whether it had to do with Chernoff bonds or the Helen Mishel bond or possibly some other bond? A. It could have been, yes.

Q. Now, did it refresh your recollection at all—first of all, you heard the tellers testify in this case, didn't you? A. Yes.

(1243) Q. Miss Graef? A. Yes.

Q. Mr. Horan? A. Yes.

Q. Mr. Lucey? A. Yes.

Q. They testified that the bonds were brought over by Mr. Kennedy while Mr. Mishel was at your desk.

Does that refresh your recollection at all as to other occasions he might have been in? A. No, it really didn't.

Q. It didn't help a bit? A. I don't say it didn't help a bit. I say it just didn't refresh my recollection.

Q. So out of the eight, all you say now is that you recall one transaction? A. Yes.

Q. What did the man look like who was in with Mr. Mishel? A. He was medium height, stocky, dark hair, I would say more on the dark complexion side.

Q. Did this man say anything to you? A. He said very little. He acknowledged that he was the man that was named in the bonds and they (1244) were his bonds.

Q. How old a man was he? A. I would say between 35 and 45.

Q. Did you ever see him in the bank before that time? A. No.

Q. Did you ever see him in the bank after that time? A. No.

Q. Did you ever see him anywhere before or after that time? A. No.

Q. You have seen him once in your life? A. Up till what date?

Q. I am talking about seeing him personally at any other time in or out of the bank except on the occasion which you have just testified about. A. I saw him in Mr. Rosenberg's office a week ago.

Q. A week ago? A. Yes.

Q. Apart from that? A. No.

Q. How long was he with you on that day when (1245) the bonds were cashed? A. Very short time.

Q. How long is a short time? A. It could have been a minute, two minutes, maybe even less.

Q. You have testified that there came a time on July 19 or you received a letter dated July 19, 1950, from the Treasury Department with those schedules attached; is that correct? A. Yes, and with the photographs of some of the bonds.

Q. You said that yesterday. I want to know what do you mean by "some of the bonds"? A. Just what I say. What else do you want me to say?

Q. I don't want you to say anything, Mr. Miller, but the truth, the absolute truth. That is all I want you to say.

What do you mean by "some of the bonds"? A. Not all of the 59 bonds.

Q. That is what you meant? A. That is exactly what I meant.

Q. Will you read the letter, please, where it refers to the photographs of the bonds? (1246) A. It says:

> "Photographs of bonds, one or more for each date of payment, are enclosed to assist you in item 2 above."

Q. How many bonds are listed in the schedules with the dates? I can save you some time. There are 59 bonds. A. We have talked about the number here many times. I haven't counted this, but I would say it is 59.

Q. You have a distinct recollection that all of the bonds listed in those two schedules were not attached with the Treasury Department letter; is that correct? A. No, I don't have a distinct recollection of that.

Q. Then, were all the bonds there? A. No, they couldn't have been.

Q. Why not? A. Because when we finally turned this over to the bonding company, we sent everything that had been received with this letter, a photostatic copy of, I think, these schedules and the letter, and the photographs that we had originally received, and there were (1247) 13 photographs which we sent to the bonding company. So that is the original bunch, as far as I know, that were received originally. They were kept intact, so I would say that is what we got originally.

Q. You recall that you got 13 bonds originally? A. No, I didn't say that.

Q. From checking these records you now know it from the records? A. I know that when the matter was turned over to the bonding company for the final payment there were 13 of them.

Q. Is this in a letter somewhere? A. Yes.

Q. Didn't you have all the bonds, Mr. Miller? A. No, I don't think so.

Q. Is there any reason why you would not want to turn over all the bonds at that particular time? A. At what particular time?

Q. The particular time you have just mentioned, to the bonding company. A. We turned over all we had.

Q. I ask you, is there any particular reason why, if you had all 59 bonds, you would not want to turn over all 59 bonds to the bonding company? (1248) A. We didn't have 59.

Q. You testified yesterday that some time after you received this letter you turned over that letter and the

schedules to Mr. Wilmot for him to make an investigation; is that correct? A. And the photographs, yes.

Q. Did you hear Mr. Wilmot testify? A. Yes.

Q. He testified he did not get anything but the letter and the schedules. A. I heard him say that. I think he was mistaken.

Q. What was on the 13 bonds that you turned over? A. I don't quite get the question, what was on them.

Q. You are familiar, are you not, with the procedure at the Pennsylvania Exchange Bank for a teller's name to be on the bond when the teller has something to do with the cashing of the bond, either his or her initial or name? A. Not too familiar, no.

Q. Do you seriously mean that, that you are not too familiar? A. Yes. There are hundreds of little things that went on in the bank that I didn't know the exact (1249) physical or mechanical procedure that was involved.

Q. You were very clear on the procedure with respect to the duties of the tellers in cashing certain bonds, weren't you, Mr. Miller? A. Yes.

Q. You are very clear on that? A. Yes. It is an entirely different matter.

Q. Did you look at the bonds before you turned them over to Mr. Wilmot? A. I would say no. I probably glanced at them.

Q. What did you see at a glance? A. That they were photographs of bonds.

Q. Did you see any names of the tellers on? A. No.

Q. Then he reported back to you some time that—a short time thereafter—let me read your answer on page 1050.

"A. 1950. When I received this I turned it over to the head teller, Mr. Wilmot, and told him to check into it. He reported back I don't remember whether it was the same day or a few days later, but he reported back that he wasn't able to get any information from anybody in

the bank or the records that would indicate how these were cashed."

(1250) Did you ask him with whom he had spoken? A. No, I did not.

Q. Did you ask him what records he had checked? A. No, I did not.

Q. What did he return to you when he finished his investigation? A. Well, it looked like everything that I had handed to him.

Q. What did you do with the letter, the schedules and the bonds thereafter? A. I suppose I put them in a folder.

Q. Were you concerned about this matter? A. Not particularly, no.

Q. You said yesterday that you did not do anything further with respect to this because the letter informed you that the Secret Service agents would be in; is that correct? A. That's correct.

Q. Would you read that middle paragraph for us again of that letter? A. No. 2?

Q. Yes, 2. A. "That you assemble all known information concerning the payment for presentation to the Secret (1251) Service agent who will call at your bank in connection with the investigation of the case; and".

Q. Weren't you aware from reading that when you received it that they wanted you to gather all known information? A. Me personally?

Q. You or somebody on your behalf for you, Mr. Miller. A. Yes. That is the reason I turned it over to Mr. Wilmot.

Q. Your bank was a paying agent for these United States savings bonds, wasn't it? A. We cashed bonds, yes.

Q. Were you a paying agent for the Treasury Department for paying these bonds? A. I never looked into that phase of it.

James W. Miller—Defendant—Cross

Q. Mr. Heffelfinger testified in your discussion with him you told him you didn't see why the Treasury Department was being so harsh because you got a very small fee for doing this. A. That's right.

Q. Did you get a fee from the Treasury Department for handling these? (1252) A. We got a fee, I think, of 15 cents a bond.

Q. Were you paying agents for the Treasury Department on these bonds, Mr. Miller? A. I say I never looked into that phase of it.

Q. What did you think you were getting a fee for? A. For cashing the bonds.

Q. And you did not know you were a paying agent for the Treasury Department on these bonds? A. I said I didn't look into that phase of it. This thing was nothing that came under my review.

Q. Mr. Heffelfinger testified—I forget exactly what he referred to, something in the amount of three million dollars that the Treasury Department had.

Do you remember what that was? A. I remember very well.

Q. What was it? A. He said that the Government had three million dollars on deposit in our bank, which was absolutely untrue. The quarter of a century I was there, I never recall there was any three million dollars at any time. The amount we had on deposit when he was there was $560,000. So he couldn't have told me that, (1253) or I would have corrected him immediately.

Q. What was the figure you want to give us? A. $560,000.

Q. Would you say that figure was true? A. That is what they tell me in the bank, so I don't see any reason they should give me a figure that is not true and not taken from the records of the bank.

Q. Was that true at the time you spoke with Mr. Heffelfinger? A. It must have been. That is the date.

Q. Was it true when you first got this letter from the Treasury Department? A. Oh, I couldn't tell you that.

Q. But you were not very concerned about this matter, is that correct? A. I wasn't upset about it, no.

Q. You were not upset about it, were you, Mr. Miller, because you were going to wait for a little time because you knew exactly what the situation was with respect to these bonds, didn't you? A. That is not so.

Q. Mr. Sershen testified that he came into the bank to see you on August 9, October 6 and October 10, (1254) and you say that he only came in twice; is that correct? A. Yes.

Q. Could he have come in another time and spoken with you, a third time? A. I don't think so, no, not on the dates that he mentioned.

Q. You are quite clear on that? A. That is certainly the best of my recollection, yes.

Q. You heard Mr. Sershen's and Mr. Sweeney's version of what took place on October 10 during that conversation, did you not? A. Yes.

Q. And your version is, in substance, that they first of all came to your desk, and Mr. Sershen had a picture, a small picture, and that it was described by you as about the size of a passport picture? A. Yes.

Q. How big is that, Mr. Miller? A. Do you want it in inches or what?

Q. Yes. A. Well, I didn't measure the picture. It just looked to me about the size of a passport picture.

(1255) Q. That is what I want to get. How big is a passport picture? A. Maybe 2 x 2, 2½ x 2. It could have been a little smaller, a little larger.

Q. Was it one picture or two pictures? A. Just one picture.

Q. By "two" I mean it might be a part of the same picture but one a profile and one a front view. A. No, it was not that type of picture. I know what you refer to.

Q. It was just one picture? A. It was just a picture.

Q. Mr. Sershen testified that you told him, and Mr. Sweeney testified to the same thing, that you never got a description of this man because he was off at the front of the bank.

Didn't you say that to Mr. Sershen and Mr. Sweeney? A. No, I did not.

Q. Did you give the same description to Mr. Sershen and Mr. Sweeney that you gave to us here today from this witness stand a little earlier? A. As near as I can remember, yes.

Q. And you say that in response to that Mr. (1256) Sershen or Mr. Sweeney said, "That's not a very good description"? A. Words to that effect, yes.

Q. Was there anything said in the conversation about Thomas Young? A. Not to me, no.

Q. Mr. Sershen or Mr. Sweeney said not a single word to you about Thomas Young? A. No. Mr. Sweeney said nothing, as far as I can remember.

Q. As a matter of fact, you told us yesterday you couldn't even remember Sweeney being there, you wouldn't say one way or another, but you didn't remember? A. That's right.

Q. Mr. Sershen testified, and Mr. Sweeney did, too, that you had on your desk at that time the bond redemption forms. Do you recall that? A. No, I believe he had a number of papers there, but what they were, I didn't go through them.

Q. Who is "he"? A. Mr. Sershen.

Q. Mr. Sershen says that you had them there, the original redemption forms. Do you recall that? (1257) A. No, no. I thought he said he had photostats that one of the clerks had obtained for him.

Q. He said he had obtained those earlier, but he said that you had on your desk the original redemption forms

on October 10. Do you recall that you did? A. No, I don't recall.

Q. Did Mr. Sershen have photostatic copies of all 59 bonds at that time? A. He could have. I didn't count them. I had my own set that had been mailed in.

Q. That had been mailed in? A. Yes.

Q. When was that? A. With this letter. July 19.

Q. You had your own set of 59 bonds? A. No, no; just the 13 that came with the letter.

Q. Did Mr. Sershen have more bonds than you did? A. He could have. I didn't count them. I didn't look at his bonds.

Q. And you cannot recall whether you had the redemption forms or not? A. No. If so, we didn't do anything with them.

Q. And you are quite clear that you did not (1258) discuss Thomas Young? A. No.

Q. You testified that you asked Mr. Sershen what the situation was with respect to the bank; is that correct? A. That's correct.

Q. What did he say to you? A. He said that the bank would not be called on to make any reimbursement because we had gotten identification according to regulations.

Q. And you also said that Sershen told you that Mishel had admitted that this was his job? A. Yes, he did.

Q. Did you hear Sershen and Sweeney testify that Mishel made no statement of any kind to either of them? A. Yes, I heard them say that.

Q. Now, did you say anything else to Sershen on October 10? A. I don't recall anything else in particular, no.

Q. What did you say about Mishel? A. I said that he was a man who had formerly been a depositor in the bank and had turned crook, words to that effect.

(1259) Q. And you knew, as you claim, by this time at least about the Alpren stock being stolen stock, the fraud

that had been perpetrated, you say, without your knowledge by Mishel upon your bank; those two things you knew by the time you had the conversation with Sershen on October 10; right? A. Yes.

Q. And at that time you say you for the first time connected Mishel to the Chernoff bonds? A. Yes.

Q. Now, did you feel that that was good news from Mr. Sershen, that the bank was in the clear? A. Well, I thought that is the way it should be, yes.

Q. You felt that was only natural? A. That's right.

Q. Did you make any kind of a notation for the file to that effect? A. No.

Q. You made a notation about Heffelfinger being into the bank, didn't you? A. Yes.

(1260) Q. I show you Defendant's Exhibit AI for identification and ask you if that is that memo to the file? A. Yes.

Mr. Hallinan: The Government will offer this in evidence.

Mr. Rosenblum: No objection.

Q. Why didn't you make a memo to the file when Mr. Sershen gave you the good news?

(Defendant's Exhibit AI for identification received in evidence as Government's Exhibit 68.)

A. Sometimes you make a memo, sometimes we don't.

Q. Once again, there is no set procedure for it, Mr. Miller? A. No.

Q. You're answering that "No," there is no set procedure? A. There is no set procedure, that is right.

Q. The best reason in the world for not making any memo like that would be that it never happened, wouldn't it, Mr. Miller?

James W. Miller—Defendant—Cross

Mr. Rosenblum: I object to the form of the question.

(1261) The Court: Sustained.

Q. Once you knew, as you say again, for the first time that Mishel had perpetrated a fraud upon the bank and that the Alpren stock put up as security for his loan was stolen securities and after you had discussed the case with Sershen on the 10th, did you thereafter make any effort to review the facts of the cashing of the Chernoff bonds in the light of the knowledge you then had? A. No.

Q. Now between December 29, 1949 and June 4, 1952, did you discuss with James Lucey the cashing of the Chernoff bonds? A. Well, he said when he was here that he came to my desk once. I don't recall it.

Q. He said that you called him over, didn't he? A. That is what he said, yes.

Q. And that was the same day, he said, that Sershen had spoken to him, spoken to you and left the bank and then he said you called him over? A. Yes, that is what he said.

Q. Do you recall that? A. No, I don't.

Q. Do you recall, then, within the period of time (1262) outlined in my question, December 29, 1949 to June 4, 1952, ever discussing the cashing of the Chernoff bonds with Lucey? A. No, I really don't.

Q. Do you recall discussing them in the same period of time with Horan? A. No, I don't. Horan didn't work there. Horan didn't work in the bank. I wouldn't have any opportunity——

Q. I am just asking you if you did. I don't care whether you discussed it in or out of the bank. A. No, I didn't discuss it.

Q. On the roof of the bank, anywhere. A. No, I didn't discuss it.

Q. It is all inclusive. I ask you the same question with respect to Miss Graef for the same period of time. Did you discuss it with her? A. No.

Q. Did you look at during the same period of time the bond redemption forms in the bank? A. I don't recall ever going through them.

Q. In the same period of time did you ever look at the bond register? A. No, no.

(1263) Mr. Hallinan: Is your Honor going to adjourn at 4.30?

The Court: 4.30, if that is all right. Is this a good place to stop?

Mr. Hallinan: Yes.

The Court: All right. Have we got all the exhibits?

Mr. Hallinan: From the jury you mean?

The Court: Yes. The jury can go now. We will take a recess until 10.30 tomorrow morning. Don't discuss the case.

(Adjourned to October 31, 1956, at 10.30 a. m.)

New York, October 31, 1956;
10.30 o'clock a. m.

(1264)

Trial resumed.

(The following proceedings were had in open court in the absence of the jury.)

Mr. Hallinan: Before the jury comes in: I think Mr. Rosenblum has an objection to this. But I have a lawyer down here from the firm of Dorff & Levy and I want to get in my documentary evidence

on this examination before trial, but it is further complicated by this: I am going to show this examination before trial, the copy that Mr. Weiss has is going to be produced for us and signed by Mr. Miller, and I want to show it to Mr. Miller. Now, if Mr. Weiss is put off until the end of the trial I don't know that I can recall Mr. Miller for that purpose. And Mr. Weiss have several personal problems.

The Court: The objection is to the interruption of Mr. Miller's testimony.

Mr. Hallinan: Yes.

Mr. Rosenblum: No, it isn't the interruption. It is a question of whether or not rebuttal should come (1265) in during the defense.

Mr. Hallinan: I don't know——

Mr. Rosenblum: It is a pretty strict rule that is applied.

Mr. Perry: Mr. Hallinan took the position from the start that he insisted—I say "insisted" loosely, Judge; you are in control of the court—but it was his position that he didn't want his order of proof interrupted. We don't want ours interrupted either. We have it mapped out as we planned.

Mr. Rosenblum: If it was part of the defense, of course, we wouldn't stand on a technicality. But he wants to take a witness in rebuttal. And the rebuttal witness must follow after the defense is completed.

Mr. Hallinan: I don't know if, technically, that is rebuttal. I have been examining Mr. Miller——

Mr. Rosenblum: How can you call any witness during the defense? I don't care who he is or what he is.

Mr. Hallinan: I am just asking the Court. If the Court does not want to allow it, I can't do anything about it.

The Court: I would tentatively conclude (1266) with Mr. Rosenblum and Mr. Perry that it is rebuttal. What I would like to do, if it really won't prejudice anybody, I don't think there is any problem, at least I doubt that there is any problem of recalling Mr. Miller should you want to do so, but my only question is, if you have got Mr. Weiss here, another lawyer, who is going to testify for a few minutes apparently, maybe we might——

Mr. Rosenblum: You know what happens when you get into a matter of a few minutes. But he said he can be here in 15 or 20 minutes.

Mr. Hallinan: But he has personal problems today.

Mr. Rosenblum: If you telephone him he can get here in 15 or 20 minutes.

The Court: I don't think it makes any great difference to the parties. I mean, do you think it would prejudice your case?

Mr. Rosenblum: It may; I don't know. I was told by Mr. Hallinan that there was something else that he wants to bring up.

The Court: No. I would only take it on this examination.

Mr. Hallinan: That is all.

(1267) The Court: I think if we were starting from scratch and that Mr. Weiss were not here I would say bring him down at the regular time, don't bring him down now, we will finish with the defense, and then if you want to recall Mr. Miller I think I would probably let you, but I would hear both counsel on that if for any reason you shouldn't.

I think once he has opened himself up for examination it is within my discretion. If there is something you wanted for that examination, or you needed a document that you couldn't get and we had to wait a week to get it from California or something, that I could let your cross stay open until you get it. But inasmuch as Mr. Weiss is here, and it looks to me like this is going to be relatively short and probably non-controversial, I would like to take the examination and let him go, but if you have- —

(1268) Mr. Rosenblum: I think plus another fact. I was willing to make another adjustment that Mr. Hallinan did not want. I said I will give you an answer if you want to and I may stipulate so we can save Mr. Weiss the trip down that if the stenographer were called he would say the following questions were put, the following answers were made. He said he does not want that.

Mr. Hallinan: I won't agree to that. We are going further. We want to show that Mr. Miller reviewed this, made corrections and signed it. If you will stipulate to that, that will serve the purpose.

Mr. Rosenblum: You throw these things at me here. I have a duty here. I don't like to get these things thrown at me. I like to cooperate.

The Court: If we are going to go into that, I will let Mr. Weiss come down. I think it proper, if he is in a sense going to contradict Mr. Miller on something, he should come in as a rebuttal witness. If it is to lay the technical proof or something you are going to ask Mr. Miller about, I would consider taking him now, but if he is going to contradict or get into anything that is going to suggest

contradiction, (1269) I do not think it is proper.

Mr. Hallinan: He is going to testify to the examination before trial.

The Court: You are going into corrections. I do not think it is proper to have that come into the middle of Mr. Miller's testimony.

Mr. Hallinan: Would you instruct Mr. Weiss to be available by phone call today?

The Court: Mr. Weiss, would you be able to come down on phone call in the next two days?

Mr. Weiss: Yes, your Honor.

The Court: I am very sorry, but I do not think it is fair to the defendant to put you on now.

Mr. Weiss: May I have this courtesy: May I be excused today at least? This happens to be a bad day for me at the office, and from tomorrow on I would be available.

The Court: All right. Is there a chance that both sides would be ready to rest otherwise today?

Mr. Hallinan: I think there is a chance. I honestly don't know.

The Court: Mr. Weiss, let me put it this way: If the case would otherwise continue until tomorrow, I will do that. Otherwise, we may have to ask you to (1270) come down because we are running loose to the end of the term and I would not want to carry the case over just because of that. It may be unfair to the jurors, the parties and everybody else.

Mr. Weiss: If I am out of my office, I will be in touch with my office for a phone call.

The Court: I appreciate it very much.

Are we all through now? Can we get the jury in?

Mr. Hallinan: Yes, your Honor.

(Jury enters courtroom.)

The Court: We are all here, I see. I am sorry

to hold you up this morning. I did not think we would be as long as we were. I am always sorry to have you waiting out there in the juryroom. I could not anticipate it this morning.

JAMES W. MILLER resumed.

Cross examination continued by Mr. Hallinan:

Q. Mr. Miller, I think yesterday you referred to a letter that you sent to Toplis & Harding? A. Mr. Hallinan, before we start could I correct an answer that I gave to a question yesterday?

Q. Yes, certainly. (1271) A. Yesterday you asked me about a painting by Degas Mr. Mishel was supposed to have given to me or sent to the bank at the time he applied for a loan on pictures. You showed me a photograph of a picture and asked me if I had seen that painting and so forth, and I think I said I didn't recall, I didn't remember, I didn't think it was the picture. Last night I checked up in the catalog which I have at home, which is issued by the United Nations, which shows that that painting hangs in the Louvre in Paris. So it couldn't have been in his possession, it couldn't have been given to me and could never have been shown to me.

Q. A copy of that? A. A copy of what?

Q. Of that painting. A. I thought you said it was a painting by Degas.

Q. I asked you a question about what you knew about it. Was there a copy shown to you? A. No.

Q. Then when you testified you were talking about some other painting? A. No, I thought you were talking about the original painting by Degas. You showed me the picture (1272) of the picture Dancer on the Stage, I believe it was.

Q. I just asked you what did you mean when you testified yesterday there was some painting at the bank, and as far as you knew it was still there? A. Yes, it's still there.

Q. What painting is that? A. I don't know. I don't think it was this painting.

Q. I show you Defendant's Exhibit P and ask you if this is the letter that you referred to yesterday? A. This is a copy of the letter that we sent to Toplis & Harding on August 8, 1952. That is the letter I was referring to.

Mr. Hallinan: May I have this marked, please, our exhibit.

(Defendant's Exhibit P for identification marked Government's Exhibit 69 for identification.)

Mr. Hallinan: I will offer this in evidence.

Mr. Rosenblum: I have no objection, your Honor.

The Court: Received.

(1273) Government's Exhibit 69 for identification received in evidence.)

Q. Mr. Miller, I show you Government's Exhibit 69 and also 20-A and 20-B, and I ask you if you can tell us by comparing the two if the group of bonds listed in the letter of August 8, which is Government's Exhibit 69, to Toplis & Harding, has at least one bond for each date on which the bonds were cashed as reflected in 20-A and 20-B? A. The Government's letter said it did. Do you want me to check out all these numbers?

Q. Do you have any doubt that it did? Maybe we can save the time and not have you compare it. Do you have any doubt that with the letter of July 19 you had

available to you at that time at least one bond for each of the eight separate transactions at the bank? If you have any doubt about that— A. The letter recited that, and I have no doubt about it.

Q. I show you Government's Exhibits 22, 23 and 24. These are the three letters referred to in the separate counts of the indictment.

With respect to 22, I direct your attention to the second paragraph, the first sentence, which I (1274) will read:

"At the time the investigation was made by your department, we were informed that the bonds were properly cashed in accordance with procedure laid down in your official circular and consequently no claim would be made against us."

I ask you, what was the basis for your making that statement in that letter? A. Because that is what Mr. Sershen told me when he was in the bank the last time I saw him there.

Q. Did anything else constitute part of the basis for making that statement? A. No.

Q. I direct your attention to Government's Exhibit 23, the letter of April 4, 1952. I direct your attention to the second paragraph. I am going to read one sentence to you:

"We regret that you are insisting on reimbursement because we feel that these bonds were cashed in good faith and within the meaning, letter and spirit of paragraph 4 of the Treasury Department circular covering such redemptions dated December 19, 1947."

(1275) Now I ask you, when you made that statement in that letter, what was the basis for making that statement? A. All of the circumstances which had preceded it.

James W. Miller—Defendant—Cross

Q. What circumstances did you rely upon when you made that statement? A. I relied on the statement of Mr. Sershen, and I felt in reading paragraph 4, which requires a stranger to be identified by a customer of the bank, I thought that fitted.

Q. You were relying on, No. 1, the statement by Mr. Sershen? A. Yes.

Q. And No. 2, you said you read the circular and thought that fitted the circumstances.

What circumstances are you talking about? What you told us happened when you cashed the bonds?

Mr. Rosenblum: I object to the form of the question. May the witness be permitted to answer the question?

The Court: I think he can lead.

Mr. Hallinan: I will withdraw the question.

Q. What were you relying on outside of Sershen's (1276) statement when you made that statement in the letter? A. The fact that Mr. Mishel had brought in a man and identified him and introduced him as Chernoff.

Q. Outside of those two things, were you relying upon anything else? A. Well, I can't project myself back to my feeling at that time four years ago, but at the moment that is all I can recall.

Q. Now I direct your attention to Government's Exhibit 24. I direct your attention to the second paragraph——

Mr. Hallinan: Withdrawn.

Q. First of all, with respect to this entire exhibit, did you receive this from Dorff & Levy? A. I did.

Q. Did you go over it? A. I read it, yes.

Q. It states in the first paragraph of the letter that:

"We have also interviewed Mr. Miller, the president of the bank."

Did they interview you? A. Well, I don't know whether you call it an (1277) interview. We talked about it many times, yes.

Q. How many times would you say you spoke with them about it? A. Well, it is very hard to say. I would say a number of times. We talked about it over a period of months, so it must have been several times.

Q. I know this is difficult, but as best you can, could you—not the exact date. I am not looking for that, but the approximate time when you first spoke with Mr. Dorff or Mr. Levy about this mater. A. I would have to look at the correspondence to fix the date.

Q. You have no independent recollection; is that right? A. No.

Q. Now I direct your attention again to the second paragraph. I will read the first sentence:

"We have been advised that a person came into the bank with a depositor of the bank, one Irving Mishel."

Did you give them that information? A. Well, I certainly told Mr. Levy enough times when we discussed it what happened, so I would say I gave him that information, yes.

(1278) Q. Let us take the second sentence:

"This person signed the bond in the presence of a teller of the bank and asked the teller to redeem the bond."

Did you give that information to Mr. Dorff or Mr. Levy? A. No.

Q. Was that the fact as you then recall it? A. No, I do not know whether these bonds were signed in the presence of the teller or not.

Q. Isn't it the fact you told us yesterday you did not interview any of the three tellers in this case personally, yourself? A. What do you mean by "interview"; that I never talked to them?

(1279) Q. Did you ever talk to Lucey, Graef or Horan about the cashing of the Chernoff bonds? A. Graef and Horan had left the bank. Whether I talked to Mr. Lucey or not I don't know. I don't recall any conversation with him.

Q. So you state that this second sentence, the information contained in that, No. 1, didn't square with your recollection of the facts; is that correct? A. Which sentence are you referring to?

Q. The second sentence of the second paragraph, Mr. Miller. A. No, I never told that to anybody because it never happened in my presence.

Q. And when you received this letter from Dorff & Levy did you read that sentence? A. Yes, I read the whole letter.

Q. No. We will take it sentence by sentence. Did you read that sentence? A. I read every sentence in the letter; I didn't read it sentence by sentence. I read the letter very rapidly, as I usually do.

Q. Did you call the attention of Dorff & Levy to the fact that that second sentence was not the fact (1280) as you knew it? A. No. Mr. Levy had left for Europe when I got this letter, and I sent it out as it was.

Q. Did you contact Mr. Dorff? A. Yes, I did.

Q. To make a change on page 2; is that correct? A. I did, yes, sir.

Q. Did you call Mr. Dorff's attention to the fact that

that second sentence was not the fact as you knew it? A. No, I did not, not as far as I recollect.

Q. Why not? A. Because Mr. Dorff had nothing to do with preparing this letter and as far as I knew he was not familiar with the file or the facts.

Q. Mr. Dorff finally prepared page 2 and signed the letter, didn't he? A. That was an entirely different matter. That was a question of a legal thing, whether I should—whether that letter should contain that information strictly from a legal point of view. The propriety of whether—what I said before a grand jury should be incorporated in the letter, it had nothing to do with the facts or anything.

(1281) Q. Couldn't you tell Mr. Dorff over the telephone and correct what you knew then and you claim you knew then to be a positive misstatement of fact in the letter, in the second sentence of the letter?

Mr. Rosenblum: I object to the form of the question as assuming something which the witness has not said. He didn't say what you just said.

The Court: I will sustain the objection as to form.

Q. Did you hear Miss Graef, Mr. Horan and Mr. Lucey testify? A. Yes, I had been here right along.

Q. Do you want to play with me, or——

Mr. Rosenblum: Oh, I object to that.

A. No, no.

Mr. Rosenblum: I don't think that is called for or necessary.

The Court: All right. Go ahead. Strike it out.

James W. Miller—Defendant—Cross

Q. Did you hear Mr. Horan, Mr. Lucey and Miss Graef testify from this witness stand that no one from the law firm of Dorff & Levy ever interviewed them with respect to the cashing of the Chernoff bonds? A. I did.

(1282) Q. Do you know whether Dorff & Levy ever interviewed these three people? A. I do not.

Q. I direct your attention now to the third sentence in the second paragraph, "The teller asked for identification and Mr. Miller, who was with that person, told the teller that Mr. Miller knew Mishel and that he was identifying the person as the payee named in the bond."

When you read this letter did you read that sentence? A. Yes.

Q. Did that square with your recollection then of the facts? A. I wouldn't say that it squares exactly, no.

Q. When you talked with Mr. Dorff over the phone about the correction on page 2 on what you called a merely legal matter, did you call his attention to the fact that that didn't square with your recollection of the facts? A. No, I did not.

Q. Why didn't you? A. I already told you; I will have to tell you again.

(1283) Q. Would you, please? A. Yes. That I knew that Mr. Dorff had not prepared this letter. I did not think he was familiar with the file or the facts, or where Mr. Levy had possibly gotten his information or how he prepared the letter, so I didn't discuss anything except what I thought was that one legal point in the last paragraph of the letter.

Q. I direct your attention to the fourth sentence of that second paragraph, "Mr. Mishel and the person with the bonds went over to Mr. Miller and the latter asked Mr. Mishel who the person was; Mr. Mishel introduced that person to Mr. Miller as Mr. Chernoff, the man in whose name the bonds were registered."

Now I direct your attention specifically to everything up to the semicolon. Do you see what I mean? "Mr. Mishel and the person with the bonds went over to Mr. Miller and the latter asked Mr. Mishel who the person was." Now did you read that sentence when you read this letter? A. Yes.

Q. Or that portion of the sentence. Did that square with what you say was your recollection of the facts at that time? (1284) A. Well, the words are different but the idea is the same, yes; Mr. Mishel came over to my desk with another man.

Q. But, also, doesn't it express the idea that he came from the teller? A. It says, "Mr. Mishel and the person with the bonds went over to Mr. Miller and the latter asked Mr. Mishel who the person was."

Q. All right. Let me put it this way. In connection with the above two sentences where it says that they went first to the teller and then to you. A. The paragraph expresses and gives the meaning of a transaction the way Mr. Levy saw it.

Q. The way Mr. Levy saw it? A. Yes.

Q. But you didn't give him this information? A. The two sentences that you have referred to I just said that I did not give him that information, correct.

Q. And you knew them at that time not to square with your recollection of the facts as outlined in these two sentences? A. Yes, it didn't.

Q. And you didn't call it to Mr. Dorff's (1285) attention? A. No, I did not.

Q. Now will you tell the Court and jury once again why you changed page 2 of that letter, of the letter represented in—what is it?—Government's Exhibit 25, the last letter written? A. I thought that Mr. Levy had quoted in there my testimony before the grand jury and I felt

that it should not be quoted in the letter. I called Mr. Dorff and suggested that to him and he agreed with me. And he said that——

Q. Yes? A. And he said, "We will take it out."

Q. Now I show you the original letter that was sent over to you by Dorff & Levy which is Government's Exhibit 29, and Government's Exhibit 30, which is the copy of the second page from the file of Dorff & Levy with the pencil notations made, and 30 which is the yellow sheet with the pencilled notations indicating a change by Mr. Dorff. A. Yes.

Q. Did you testify here that you didn't suggest that language, the change, the language used in the change? (1286) A. I don't recall that I did, no.

Q. And you say that the reason you suggested that change is because you didn't think it was proper to have that matter in a letter; is that correct? A. Yes, that is what I felt.

Q. Did you think it was proper to have it in a copy of the letter in the files of Dorff & Levy? A. Yes, I saw no harm in that.

Q. Just that— A. I didn't actually think that, the way you are telling it right now.

Q. I am quite sure you did not, Mr. Miller. Was your objection just to having in a letter which was sent out or to revealing matter that was testified to before the grand jury? A. Just in a letter that was sent out. Anything I discussed with the attorneys for the bank, this was a bank matter, I see no reason why I can't discuss it with the bank's attorneys.

Q. So in that sense you were willing to reveal what you had testified to before the grand jury, is that correct? A. Yes; I see no harm in discussing it with the attorneys for the bank, inasmuch as this was a bank (1287) matter.

Q. And you were willing to have a record of that in the files of Dorff & Levy? A. Well, when you say "willing," I really never even thought about it at that time.

Q. On the contrary, you thought about it quite seriously, didn't you, at that time? A. I did not think about it in the—from the phase that you are talking about, whether it should be in their files or not, no.

Q. You didn't have any serious objection to revealing on general principles what you had testified to before the grand jury, did you? A. Well, of course I did.

Q. Pardon? A. Of course I have.

Mr. Hallinan: May we have this marked, please.

(Marked Government's Exhibit 70 for identification.)

Q. I show you Government's Exhibit 70 for identification and ask you if you recognize it? A. Yes. It is a handwritten memo made by me for the file.

(1288) Q. Your file, that is? A. Our files.

Q. Yes.

Mr. Hallinan: I offer that in evidence.

Mr. Rosenblum: I have no objection.

(Government's Exhibit 70 for identification received in evidence.)

Q. Do you remember when that memo, approximately when that memo was written by you, Mr. Miller? A. It must have been shortly after Rosenberg was indicted.

Mr. Hallinan: May I read this to the jury, your Honor?

The Court: Yes.

James W. Miller—Defendant—Cross

(Mr. Hallinan reads Government's Exhibit 70 to the jury.)

Q. This is matter that you have testified to before the grand jury, isn't it, Mr. Miller? A. Yes; there is no reference there, though, that I testified then.

Q. It is matter that you testified to before the grand jury, though, isn't it? A. Yes, but most of the information that is in that memo I got from Mr. McAvinue after the man was indicted.

(1289) Q. Mr. McAvinue didn't tell you that you had identified Rosenberg as the person— A. No.

Q. —that you say was introduced as Nat Chernoff? A. No, certainly didn't.

Q. You testified to that effect before the New York County grand jury? A. I certainly did.

Q. Now, Mr. Miller, I want to read page 2, the second sentence of the first paragraph on page 2. This is the letter before page 2 was changed. "Incidentally, Mr. Miller testified before the grand jury regarding the theft of these bonds and identified the person who cashed the bonds as the one who claimed he was Mr. Chernoff and who was introduced to Mr. Miller as Mr. Chernoff by Mr. Mishel."

Isn't it a fact, Mr. Miller, that you changed or had changed page 2 of that letter because the statement in the first page 2 threw into sharp conflict and stated the exact opposite of what you had stated to Agent Sershen and Agent Sweeney on October 10, 1950? A. It is not.

Q. Didn't you at that time have a very clear (1290) recollection when you caused this second page to be changed that you had in fact told Sershen and Sweeney that the man brought in stood at the front of the bank and you did not even bother to look at him and, therefore, you could give no kind of a description of him? A. That is not so.

Mr. Hallinan: May we have this marked, please.

(Marked Government's Exhibit 71 for identification.)

Q. I show you Government's Exhibit 71 for identification and I ask you if you have ever seen that document before? A. Yes, I must have; I signed it.

Q. Your signature is on it, isn't it? A. Correct.

Q. Is it notarized at the bottom? A. Yes.

Q. By whom? A. George P. Vassil.

Q. Do you recognize his signature? A. Well, his signature isn't on here. I don't think his signature is required on this type of——

(1291) Q. Pardon? A. I do not see his signature here. I don't think it is required on this type of——

Q. Or just the stamp. His notarial, I guess is the word, stamp is on there. Who was Mr. Vassil at that time? A. He was assistant vice-president of the bank and still is.

Q. Do you recall how you happened to sign that? A. I don't recall any of the circumstances, no.

Q. Did you read it before you signed it? A. I probably did.

Mr. Hallinan: I think I am through, your Honor. I just want to check my notes.

Mr. Rosenblum: May I see what you showed the witness, Mr. Hallinan?

(Mr. Hallinan hands to Mr. Rosenblum.)

The Court: We will take a brief recess now and resume at five after twelve. Don't discuss the case.

(Jury retired.)

The Court: Do you have any application, Mr. Rosenblum, with respect to the document?

Mr. Rosenblum: I haven't read it. I will (1292) read it during the recess.

The Court: All right.

(Short recess.)

Mr. Rosenblum: I understand there is nothing before the Court I have to take a position on. We have a document marked for identification.

The Court: I did not know whether you wanted to do anything, in other words, whether you were going to offer it or what. I did not know what you were going to do.

The Court: I thought you had finished it.

Mr. Hallinan: I think on the state of the record I can offer it.

The Court: You finish reading it so you will be up to date on it.

(Jury returned to the courtroom.)

The Court: Have you anything further?

Mr. Hallinan: No, your Honor.

Mr. Rosenblum: May I have Exhibit 69, please?

The Court: I am not clear. Have you decided what you want to do with the last exhibit?

(1293) Mr. Hallinan: I am sorry, your Honor. I would like to offer Government's Exhibit 71.

Mr. Rosenblum: Are you offering the entire document or some particular portion of the document?

Mr. Hallinan: My original offer is the entire document.

Mr. Rosenblum: I object to it first on the ground there is no proof as yet from stenographers as to whether it was or was not accurately transcribed, and secondly, there are notations there concerning off the record which I would like to establish with the persons there at the time if there was something in there which would be of some relevancy to the document itself.

The Court: Let me see it.

(Government's Exhibit 71 for identification handed to Court.)

The Court: Well, I will receive it so far as the competence is concerned.

Can you tell me what pages you are offering with respect to relevancy? Do you want the whole document?

Mr. Hallinan: I can mark it off. Can I (1294) have a little time on that? It is not every page. It is portions of pages.

The Court: All right, fine. Do you want to offer any right now that you are sure of, and then I will give you an opportunity to supplement it later, if you want to? It is up to you.

Mr. Hallinan: I will hold off a little. It will take a little time.

The Court: You go ahead, Mr. Rosenblum.

Re-direct examination by Mr. Rosenblum:

Mr. Rosenblum: May I read 69, which was offered and admitted into evidence this morning? It has not been read to the jury.

The Court: Yes.

(Mr. Rosenblum read Government's Exhibit 69 to the jury.)

Q. Was the original of this letter, Mr. Miller, sent registered to Toplis & Harding? A. That notation on the copy would indicate that it went registered.

Q. And Toplis & Harding are the bonding company's representatives? A. They are the adjusting agents for Lloyds of London, who was our bonding company.

(1295) Q. When payment was made to the Government, you received either at the same time or before or after

the exact same amount, $6684.50, from the bonding company? A. The exact amount, I believe, yes.

Q. Was that sent to you before or about the same time? A. It was about the same time.

Q. Who did you refer to as the "confirmed crook"? A. Mishel.

Mr. Rosenblum: May I have that picture, please?

Mr. Hallinan: Surely (handing photograph to Mr. Rosenblum).

Q. I show you Government's Exhibit 9 in evidence and ask you whether this was the picture of the man that you identified as the man who was introduced to you as Chernoff? A. Yes.

Q. Can you tell us whether or not in the letter I read to the jury which was introduced this morning, you recall, during your cross-examination, can you tell us whether or not that was the man who you referred to as the forger who has been been indicted? (1296) A. Yes, this is the man.

Q. And you testified against him before the grand jury? A. Yes.

Q. And he went to jail, didn't he? A. Yes.

Q. And Mishel went to jail, too? A. Yes.

Mr. Rosenblum: May I have the complete file on the Robino papers, please?

Mr. Hallinan: Exhibits?

Mr. Rosenblum: Plus anything else on Robino.

Mr. Hallinan: It will probably take half an hour.

The Court: We won't wait. You go ahead.

Mr. Hallinan: That reminds me, your Honor, I forgot something. 64, you will recall, was the buy and sell order. 64-A was the marked-off page. I forgot to offer, evidently, 64-A. I thought I had

at the time. So I will offer it now. That is one of the documents he is looking for.

The Court: Received.

(Government's Exhibit 64-A for identification received in evidence.)

(1297) (Documents handed to Mr. Rosenblum.)

Mr. Rosenblum: Do you have a copy of the check and the stub entries? I think you had them here the other day. Also the record of cashier's check issued.

May we use a photostat?

The Court: Of what?

Mr. Rosenblum: Of the document I am looking for.

(To Mr. Hallinan) You have no objection, do you?

Mr. Hallinan: No, I have no objection.

The Court: What is this, the Robino check?

Mr. Rosenblum: It is some documents other than ones in evidence. That I have because it is in evidence.

(Mr. Rosenblum confers with Mr. Hallinan.)

By Mr. Rosenblum:

Q. Mr. Miller, I show you Government's Exhibit 64-A—

Mr. Rosenblum: Is the other one B?

Mr. Hallinan: The check is 64.

Q. I show you, Mr. Miller, Defendant's Exhibit 64——.

The Court: The check is 62, in case anybody (1298) is interested. The book itself was 64. That

is marked for identification. 64-A is the page which was received in evidence.

Mr. Rosenblum: Thank you.

Q. I direct your attention to 64-A, which is part of 64 marked for identification, and direct your attention to these two slips, the confirmations, which are attached.

Mr. Rosenblum: They are part of that, are they not? The two confirmations are part of that exhibit?

Mr. Hallinan: Yes.

Q. I direct your attention to the two confirmations which are part of 64-A and ask you to tell us, if you can, the name of the person at the bank who handled that transaction? A. It says "Attention Mr. Littlefield," which would indicate he is the man that gave the order to the broker.

Q. And who was Mr. Littlefield? A. At that time he was manager of the branch.

Q. And that item of "Attention Mr. Littlefield" appears on both the documents which are attached and part of 64-A? (1299) A. Yes. One is a carbon copy of the other.

Q. Yesterday, if you recall, you were examined with reference to 62, which is the check in evidence. You explained or testified with reference to the manner in which these checks are prepared and also as to whether or not the check was signed by you on the day when the check was issued or at a later time. Do you recall that testimony? A. Yes, I recall that.

Q. Now I show you——

Mr. Rosenblum: Let me mark this first. Will you please mark the rest of these papers?

The Clerk: All of them?
Mr. Rosenblum: Yes.

(Defendant's Exhibits BB through BH, inclusive, marked for identification.)

(1300) Q. BB for identification is the same as 62; right? Because I want to cover the entire batch here.

The Court: What do you mean it is the same as 62?
Mr. Rosenblum: It is a photostat of 62. It is in evidence; I don't want to offer it again.

A. But everything on the photostat doesn't show up on the—everything on the check doesn't show up on the photostat.

Q. All right. Then you tell us, please, what is BB for identification? A. This photostat?

Q. Yes. A. This photostat——

Q. I will state it to you. It is agreed between the Government and myself that we may use photostats in the place of the original.

The Court: I am not agreeing on that. I don't know what you and the Government have agreed to. So we will go ahead. Let us go ahead and we will cross each bridge as we come to it.

Q. All right. A. All I want to call your attention to the fact (1301) is that there is matter on the check which does not show up in the photostat.

Q. You mean because it is not clear? You can't read it like with the "2"? A. No. These initials here don't show up at all.

Q. Then there are initials you say on the check, which is 62, which do not appear on BB for identification? A. Yes. I can't make it out on the photostat.

Q. All right. Will you tell us, please, what is BC for identification? A. That is a carbon copy which is made at the same time the check is made. The check is inserted in the typewriter, and this copy which in the bank is a yellow copy, they come in sets, and they insert them in sets.

Q. This is one of the copies of the set that is made at the time the check is prepared? A. That is correct.

Q. All right. I direct your attention to BD for identification and ask you to tell us what that is? A. It is also a photostat of a second carbon copy that was made at the same time the check was made (1302) up.

Q. So you have an original, then you have two carbon copies that you have covered so far? A. That is right.

The Court: BD is a carbon copy itself, not a photostat.

The Witness: No, it is a photostat of a carbon copy.

The Court: It is a photostat of a carbon I copy. All right.

Mr. Rosenblum: Your Honor, both BC for identification and BD for identification are both photostats.

The Court: BC is a photostat of the carbon?

Mr. Rosenblum: Yes.

Q. Now I show you BE for identification and ask you to tell us what that is? A. That is a photostat of a cashier's check dated October 10, 1949, made to Gude Winmill & Company in the amount of 55 cents.

Q. Now will you please look at the next one, which is BF for identification, and I ask you to tell us what that

is? A. That is a carbon copy of a—well, what we (1303) call a credit ticket dated October 10, 1949, crediting the account which we call the commission account, sale and purchase of securities, for the service charge which was made at the time this transaction was consummated.

Q. That was $50? A. $50. This is an offset rack, and there is the initials of people here.

Q. Will you tell us what BG for identification is? A. It is a photostat of one side of the average balance card for Daniel Robino.

Q. That is the same as—the original of that card is in evidence. A. Yes, we had it here the other day.

Q. Yesterday. A. Yesterday.

Q. Just tell us what the last one is. A. It is a photostat of another side of the same average balance card of Daniel Robino.

Mr. Rosenblum: Well, I will not offer, your Honor, the ones which we have, the originals, any photostats in lieu of the originals.

The Court: I thought you were going to put in photostats in lieu of the originals.

(1304) Mr. Rosenblum: We can keep them all together. I offer them.

The Court: All right.

Mr. Rosenblum: I offer BB for identification, BC, BD, BE, BF, BG and BH for identification.

Mr. Hallinan: I have no objection.

(Defendant's Exhibits BB through BH for identification received in evidence.)

Q. Now, Mr. Miller, first I direct your attention to 62 in evidence, and you testified it has some initials in the corner that do not appear on the photostat of it. Will

you tell us what those initials are? A. These initials are in pencil in the upper lefthand corner of the check, Ralph Littlefield's initials. And there is a stamp of No. 2 teller who cashed the check. Mr. Littlefield's initials indicate that the check can be cashed by the teller even though the teller does not know the man.

Q. That is approval to cash, is that right? A. That is right.

Q. You testified yesterday with respect to Government's Exhibit 62 in evidence, that although you now have before you both the signature of Ralph (1305) Littlefield and J. W. Miller on the front of the check, that you didn't put your signature on it at the same time when Mr. Littlefield put his signature on it?

Mr. Hallinan: I object. I think we could have a few more direct questions, your Honor.

Mr. Rosenblum: I will break it down.

The Court: I will let him answer it. Go ahead.

A. Yes, I so testified.

Q. I direct your attention now to BC', and please tell us quickly just what you said it was before so that we will know which one you are talking about. A. That is the first carbon copy of the check.

Q. Will you tell us whether or not you can, from an examination of BC' in evidence, the original check was signed at a particular time? A. Yes.

Q. Will you tell us, please, what you refer to on the document upon which you predicate your answer "Yes"? A. Any officer who signs a check at the time it is presented to him signs the check itself and on the carbon copy puts his initials. My initials aren't on this carbon copy, which indicates that I was not present or I was not available or that I didn't sign (1306) the check at the time it was issued.

Q. Is it the fact that if you had signed the check on that day, Littlefield hadn't signed, your initials would be on the copy that you just referred to and his would be blank? A. That is right.

Q. Will you look at the third copy and will you tell us whether or not it has an indication—it has some mark thereon which would indicate to you that the check was signed at a time other than the time when you signed it? A. Mr. Littlefield's initials are on his signature line which indicates that he signed the check at the time it was issued. There is nothing on the other signature line, there is no initial, which indicates that I did not sign the check at the time it was issued; probably was not present or available.

Q. From looking at BC in evidence and BD in evidence, can you tell us whether or not the initials of Mr. Littlefield aren't exactly the same so that you could say that it is not a carbon? A. Oh no.

Q. It is not a carbon? A. No. As a matter of fact, these are two (1307) different checks, one has 55——

Q. Oh. In other words, the first check that you referred to as being signed by Mr. Littlefield at a time prior to the time you signed it is BC and that is the check in the amount of $5035.22? A. Correct.

Q. Will you tell us, please, what appears on the lefthand side—or will you tell us, please, what this means that appears on the lefthand side of BC in evidence? A. Well, when this is made up there is attached to the lefthand side of the check a little stub and underneath is—on the carbon is a copy of what appears on the stub, and the stub is a digest of the check.

Q. Giving the date? A. The date.

Q. And the amount? A. And whom it is payable to. It says—well, it shows what the offset is. When you issue a cashier's check you have to have an offset, you have to

have money or cash or charge to a customer's account. That balances it off.

Q. Can you tell us whether or not from an (1308) examination or looking at BC whether there was also another person connected with the bank who had something to do with this transaction, with making entries, or whatever other way you know it? A. There were two other people.

Q. Tell us what that stub—I just direct your attention to initials. A. The initials on the bottom of the stub, there are two sets of initials, J. L. and O. D. J. L. means that Mr. Lucey directed O. D. to actually type the check.

Q. Who was O. D.? A. Well, I did not remember until I heard the name here the other day. Olga Durham.

Q. How about your initials? Are those X marks or initials that appear to the left of that? A. On one of them it looks like something is Xed out. On the other it is just the two initials I just read, J. L. and O. D.

Q. Looking at BE in evidence, will you tell us whether that check, which is to the order of Gude Winmill for the 55-cent difference which was testified by you yesterday is a check signed by Mr. Littlefield and you? (1309) A. Yes.

Q. Were they signed at the same time? A. No. My signature was affixed at a later and subsequent time.

Q. I direct your attention to BF which is in evidence and ask you to just tell us what that represents? A. That is a credit ticket for the commission which we just spoke of which was credited to the bank's commission account for the service in handling this transaction.

Q. Can you tell us whether there are any initials on there which would indicate as to who prepared that commission credit item? A. There's two sets of initials. One is Littlefield's, and the other—these little marks mean L/D, loan and discount. And this "L" under it is Mr. Lucey's initial.

Q. In other words, can you tell us whether or not from looking at that you can tell us who fixed the amount of the commission? A. Well, I really can't. But it wouldn't be Lucey; it would be the manager of the branch.

Q. Who was that? (1310) A. Mr. Littlefield.

Q. Can you tell us whether or not this matter was handled by Mr. Littlefield? A. Everything on the records indicates that he did. I haven't any independent knowledge of whether he did or didn't, but all the records indicate that.

Q. Now I think you told us, so I cover them all, BG, BH are the photostats of the average balance card which is in evidence, is that right? A Both sides of it, yes.

Q. You have stated that you can say that you didn't sign your name at the same time that Mr. Littlefield signed his on the check which was prepared. Then, in addition to the other reasons which you gave us, is there something on the face of the check itself which indicates to you that you didn't sign at the same time? A. Yes. In addition to the fact that I did not sign the duplicate, I had a little sign which was just a secret between the auditor and myself.

Q. Who was the auditor? A. Mr. Heddesheimer. Any time this little tick appeared on the signature meant that I signed it at a subsequent time and not at the time that the check (1311) was made up.

Q. When you say this little tick, will you please indicate just what you refer to? A. It is very hard to describe it without looking at it. It is a little tick, a little above at the end of the signature, just slightly before it.

Mr. Rosenblum: May I direct the jury's attention to that?

The Court: Yes. Will you show it to me when you get around to it?

Mr. Rosenblum: Right here, the little item here (indicating).

The Court: All right.

Mr. Rosenblum: I direct your attention, ladies and gentlemen, to Exhibit 62 in evidence and to the little mark right there, a little like a half moon. I will pass it around, with the Court's permission. This item right here (indicating).

Q. Can you tell us, please, whether or not BC in evidence similarly had the little tick mark that you refer to, which I think you said indicates that you did not sign the check at the same time that Littlefield signed the check? A. It does.

(1312) Mr. Rosenblum: I am directing your attention, ladies and gentlemen, to BE in evidence (showing exhibit to jury).

Q. Will you tell us, please, Mr. Miller, whether or not there was a fixed amount that was charged in connection with transactions of this kind? A. We had a schedule for ordinary transactions, yes.

Q. And will you tell us whether or not under that schedule there was available to whoever fixed the amount of the charge latitude to increase or decrease it based upon the circumstances which were present? A. In many cases you could even waive it if he thought the customer's business justified it. For a special service the charge might be greater.

Q. And the $50 which was fixed in the way you have indicated, did that go to the bank? A. Oh, yes. There is a credit ticket there.

Mr. Rosenblum: May I pass this around?

The Court: Why don't we go to lunch now and you can do that after lunch. I think I told you

before on rainy days the 15 minutes before one o'clock is very important.

(1313) We will take a recess now and resume at 2 o'clock. Don't discuss the case.

(Recess to 2.00 p. m.)

AFTERNOON SESSION

JAMES W. MILLER resumed.

Mr. Rosenblum: May I, your Honor, pass along to the jurors Exhibits 62, BB, BC, BD, BE, BF and BG (handing)?

(Mr. Hallinan approached the bench.)

Mr. Rosenblum: May Mr. Perry approach while I work on this?

(Short conference at the bench between Court and Mr. Hallinan and Mr. Perry off the record.)

(The following proceedings at the bench out of the hearing of the jury.)

Mr. Perry: On the question of Goverament's Exhibit 71 for identification, it is my information that Mr. Hallinan purports to offer this exhibit which consists of minutes of an examination in order to show some purported inconsistency between between Mr. Miller's present testimony and statements made by him in question (1314) and answer form back in 1951 during an examination before trial.

Now we will object to the use of these minutes in any form for the following reasons: First of all, the testimony of Mishel is that Schnabel was sent to the bank; the testimony of Schnabel is that he was at the bank; the testimony of Miller

here is that he had seen Schnabel at the bank. So that insofar as Schnabel's presence at the bank is concerned there is no inconsistency in any of the testimony.

Now the question of whether or not Miller made a prior statement at any time which was inconsistent with his trial testimony on this point is, we submit, collateral to the issues at hand, and consequently we say the Court is bound by Mr. Miller's answers; and his answers in substance were either he does not remember the examination, or if it is in there it must be so. I would say, your Honor, that that would preclude any further inquiry and that it would be, we suggest, error for the Court to permit in evidence these minutes, which are Exhibit 71, or to go beyond that and try to establish that there were connections made, which I am told by Mr. Hallinan (1315) that that is one of the things he proposes to show, that there were additions or corrections or amendments made in this testimony by Miller, and I would suggest all that is collateral to the issues and therefore should be excluded and, initially, should not even be permitted.

Mr. Hallinan: I would say, in short, that I will argue to the jury, I think just on its face, the denial of knowing Morty Schnabel under the circumstances of that examination, where Morty Schnabel was described to him, where the man says now the primary reason why he remembers him is because of the harelip, and I think it is devastating, to put it mildly——

The Court: Who developed his recollection of Schnabel?

Mr. Hallinan: On direct——

The Court: And lack of recollection—it is not

just a question of whether Schnabel came in the bank. It is the testimony that it suggests that Schnabel—he doesn't say this, but he says by his recollection Schnabel came in and Siegel didn't.

Mr. Perry: Yes.

The Court: And I think this shows an (1316) inconsistency in his recollection of Schnabel but not Siegel. In other words, if he had said he did not recollect either or he recollected both, I am not sure that this would be of particular interest, but where he seems to suggest that Schnabel came and Siegel didn't, I think that this is admissible to show that on a prior occasion his recollection wasn't any better as to one than the other.

Mr. Perry: One thing I do want to stress, your Honor, is that his trial testimony is at least on that point entirely in accord with what the Government——

The Court: It is not consistent with the statement that Siegel and Schnabel came. He suggests that only one came.

Mr. Perry: May I ask, Judge—these minutes, Exhibit 71 for Identification, have nothing to do with Siegel?

The Court: I think it suggests that his recollection is no better as to one than the other. That is what the Government would argue. I am not finding that.

Mr. Hallinan: I think also, in any kind of (1317) case, especially in criminal cases, you can always show that the person made inconsistent statements on the theory that it shows consciousness of guilt.

The Court: No.

Mr. Hallinan: Yes.

Colloquy of Counsel

The Court: Oh, I see what you mean.

Mr. Perry: It is where they are inconsistent with his testimony; it is where the position taken at the trial by the witness is inconsistent with the Government's theory. This is consistent with that theory. He says he knew Schnabel. There is nothing inconsistent.

The Court: Is it your claim that the denial of recollection of Schnabel in this examination before trial has something to do with showing consciousness of guilt?

Mr. Hallinan: That is one of the theories, yes, your Honor. And then the purpose outlined by your Honor.

The Court: I will take it. I will let him bring it in.

Mr. Perry: What is the point you want to make?

Mr. Hallinan: I have marked them all in (1318) here. I guess the best way to treat this, if everybody agrees, the Court and my opponent, is to read into the record the portions out of here.

The Court: All right.

Mr. Hallinan: Because I told you I had an unfortunate example with another document that got before the jury.

The Court: All right.

Mr. Perry: I am sorry.

The Court: He just wants to read—in other words, we will receive the marked portions in evidence and we will read them in and there will be no physical exhibit.

Mr. Hallinan: I am going to read enough to identify this from the caption and——

Mr. Perry: With Miller? Are you going to do this with Miller or some other witness?

Mr. Hallinan: What do you mean with some other witness? I am going to read it to the jury myself.

Mr. Perry: It is not in evidence.

The Court: I will receive those portions as marked.

Mr. Perry: Has Mr. Rosenblum raised the technical requirement of getting the reporter?

(1319) Mr. Hallinan: This man signed it and said he proofread it.

Mr. Perry: Oh, I was out of the courtroom at the time, your Honor.

The Court: Okay.

(Pause.)

The Court: Mr. Hallinan and Mr. Rosenblum, would you come up here, please.

(Discussion off the record at the bench.)

The Court: I guess we are all ready, Mr. Rosenblum.

Re-direct examination continued by Mr. Rosenblum:

Q. Mr. Miller, do you recall Mr. Hallinan asked you during his examination about a kite and then he described one to you; do you recall that? A. Yes, I recall that.

Q. Did you have a kite in the bank? A. Yes, we discovered a kite being run by Mr. Littlefield.

Q. And about when was that? A. That was in November of 1949.

Q. What did you do after that? A. We discharged Mr. Littlefield.

James W. Miller—Defendant—Redirect

Q. Can you tell us what persons connected with (1320) the bank are necessary to run a kite? A. Well, it would be a combination of chief clerk, manager, teller and possibly bookkeeper.

Q. Was that discovered after Mr. Littlefield took ill? A. Yes.

Q. Can you recall how long after that? A. Well, I would say within a few days. He tried to continue to run the kite from the hospital, and the teller that he was giving instructions to reported it to the manager.

Q. Was that a man by the name of Hall? A. Hall yes.

Q. Mr. Hallinan questioned you with reference to some questions and answers you gave in connection with a suit. I think it was referred to as the Rialto suit. Do you remember that? A. Yes, I remember him asking me.

Q. Can you tell us just what that suit was about.

Mr. Hallinan: I will object to this. I think what it was about is irrelevant, your Honor. The fact of the questions, the fact of the answers as they relate to this matter, unless Mr. Rosenblum wants to—I culled out portions of this just to (1321) avoid putting the whole thing into evidence. If the whole thing should go into evidence, I think we can solve it that way.

Mr. Rosenblum: I will withdraw it. I think we can save time that way.

Q. Do you recall that Mr. Hallinan questioned you yesterday, or I think it may have been the end of the first afternoon when he questioned you regarding a Mr. Collier; do you recall that? A. Yes.

Q. Who was Mr. Collier? A. He was the president of the bank up until the time he died. That would be from——

Q. Will you keep your voice up, please? A. Yes.

Q. When you say "president of the bank," you are referring to what bank? A. Pennsylvania Exchange Bank.

Q. Do you know about when he passed on? A. I think it was 1945.

Q. Can you tell us whether or not—I will lead you as to this—you were vice-president at the time of his death? A. I was.

(1322) Q. For how long a time prior to the time of his death did you become a vice-president? A. I was vice-president from 1930 until 1946.

Q. '30 to '46? A. Yes.

Q. Do you recall Mr. Hallinan—I am referring to page 1135, the bottom of the page, and the top of 1136—asked you whether Mr. Collier criticized you for making loans to bookmakers; do you remember that? A. I remember he asked me that, yes.

Q. Tell us, please, did you have the power or duty, or responsibility to make loans at that time? A. No, I did not. Only Mr. Collier had it.

Q. That is definite? A. I am quite sure it is, yes.

Q. You were also questioned with reference to permitting checks to be paid against uncollected funds.

Will you please tell us under what circumstances the bank paid checks which were issued against uncollected funds? A. We paid some every day.

Q. Tell us the circumstances when you did and when you didn't. (1323) A. Well, it is very hard to pin it down. Each case was considered on its own. The managers or the chief clerks, whoever was handling the referral sheets, usually checked the thing out and referred to me at the end of the day if it happened to be in the office where I was, and I relied on whether they told me everything was all right, and I would simply initial them at the end of the day.

James W. Miller—Defendant—Re-direct

Q. I believe Mr. Hallinan asked you if you recall that Mr. Lucey at one time, and Mr. Brennan at another, used to handle the referral sheets as far as Mishel was concerned. Do you recall that? A. Yes, I recall discussing it. Q. Did Mr. Lucey handle them? A. Mr. Lucey was not made chief clerk until some time in the spring of 1950, so he wouldn't have handled it at any time that Mishel's accounts were active unless it was possibly some time in the spring of 1950. I don't recall exactly when he was made chief clerk.

Q. Do you recall, Mr. Miller, that yesterday you were examined by Mr. Hallinan with reference to Government's Exhibit 46, which is made up of 26 charges each in the amount of one dollar and concern (1324) themselves about Irving Mishel, 2960 Third Avenue; do you recall that? A. Yes.

Q. What did you have to do with the preparation of those slips? A. Nothing. I have never seen these slips before.

Q. You referred to a referral sheet; do you recall? A. Yes.

Q. Tell us what appeared on the referral sheet. A. All of the items that the bookkeeper had reported after they had posted the exchanges, all the items that appeared as having been short or uncollected at the time they posted the account.

Q. And in connection with that service there was a charge of a dollar? A. Not simply being on the referral sheet, no. The charge arose in this way: If, after the manager or chief clerk had gone through the referral sheet, and in most cases most of the items would be eliminated either by telephoning to the customer to cover or having found in the bookkeeping department there had been a mispost from one account to another (1325) or a miscalculation in the number of days involved in the un-

collected, so when the sheet was finished, while the sheet started out with 20 or 30 names on it, they would have eliminated possibly half of them a quarter. It depends on the particular day. If any item was paid against uncollected funds or against a deposit made the same day to cover, then a charge of one dollar was made. The sheet then went to a girl—I don't recall exactly which girl—a different one in each office—and from that sheet she made up these notices. They were made up, I believe, in triplicate. One went——

(1326) Q. Did you have anything to do with those particular steps? A. No, nothing.

Q. Did you at any time give any special preference treatment to Mishel's items as against other customers' items? A. No, they were just like anybody else on the list.

Q. You say at the end of the day a referral sheet was brought to you by the manager of the bank who discussed with you what was on it? A. Yes; there was very little discussion. I simply asked him if he pointed out that there was something that he didn't want to O. K. that he shouldn't, it went back.

Q. Then you initialed it? A. I only initialed it if he said it was O. K. I didn't go to the books or anything to check it up.

Q. Was there a single occasion when you ever said to either Mr. Brennan or to Mr. Lucey or anyone in connection with one of Mr. Mishel's items that he should get some special preferred treatment in that regard? A. I would say no. I certainly don't recall any.

(1327) Q. I show you Government's Exhibit 45 in evidence which is the signature card of Sam Marco with an address Forrest Hotel, "typed in, 250 West 49th Street, and then appears, c/o Sam Siegel, 1416 Walton Avenue, Bronx, 54." I think it looks like, New York.

Now, tell us, did you ever see this card with the name Sam Siegel on it? A. No. These are kept in the signature files with the tellers and with a duplicate file—there are two files, one in each office. Duplicate files. They are kept by the tellers. I never saw the signature cards.

Q. I mean prior to this case or the preparation of this case. A. Yes.

Q. You understand that, do you not? A. Yes.

Q. Did you ever see that card, did anyone bring to your attention that card with the penciled words "Sam Siegel" on it? A. No, I didn't see any reason why they should have. I don't recall ever seeing the card until we saw it here recently.

Q. That card has, does it not, on it, the person who got credit for the account, Sam Marco? (1328) A. Yes, it has my initials on it, J. W. M.

Q. That has been referred to us as one of the stiff accounts, is that right? A. Yes.

Q. The same as Exhibits 10 and 11, the Case account and the Young account were also referred to as stiff accounts? A. That is right.

Q. Take a look at that card. Tell us who opened that account. A. The initials are, it says, "Opened by RHL," which is Mr. Littlefield.

Q. Mr. Littlefield opened it, is that right? A. Yes.

Mr. Rosenblum: Without taking the time to pass it around, may I just direct the jury's attention to one item?

The Court: All right.

Mr. Rosenblum: I will read: On top is Sam Marco, individual, Sam Marco, c/o Forrest Hotel, 250 West 49th Street, New York City. Then the pencil notation, c/o Sam Siegel, 1416 Walton Avenue, Bronx, and introduced by J. W. M.

You say that is a credit?

(1329) A. Right.

Mr. Rosenblum (to the jury): And then "opened by RHL." It has been testified to as being the initials of Mr. Littlefield. An initial deposit $200. Business salesman. 12-28-48. Then in ink, closed September 15, 1949, $124.21.

Q. I show you Government's Exhibit 61 in evidence and ask you whether this is the opening sheet for Frank Williams that has been referred to as one of the stiff accounts. Do you remember that? A. Yes. It is.

Q. Now, can you tell us whose handwriting that appears to be? A. It appears to be in the handwriting of Mr. Littlefield, as near as I can recall his handwriting.

Q. I show you 59 in evidence which is the opening sheet in the name of S. H. Newman, which likewise has been testified to as being one of the stiff accounts, and ask you whether you can tell us in whose handwriting that is written. A. It appears to be Mr. Littlefield's handwriting.

Q. Can you tell us whether or not an opening sheet is first prepared before a signature card is prepared? (1330) A. Well, that really depends on the situation, Mr. Rosenblum. If the signature card is brought in by a depositor with a signature on it, of course, the signature is the first thing that is on the card, then whoever opens the account and takes the initial deposit gives the customer the check book, and then he makes out, or she makes out, this opening sheet.

Then from the—the opening sheet is handed with the signature card to the secretary or clerk. And from this sheet she types on to the signature card such information as should be shown on the signature card. From that she—if the sheet shows it, and in many cases it does, who gets credit, if it is my initials she types in my initials. If there is no initials on the sheet as to who actually opened it, she recognizes the handwriting, she puts it down. If

she didn't, I suppose she would inquire as to who opened the account. Or she would probably, might—if it didn't show on the sheet she might even inquire as to who gets credit.

Q. You say in the case of Frank Williams and the Newman, they look like the handwriting to you of Littlefield? A. As near as I can tell it, yes.

(Defendant's Exhibit BI marked for identification.)

(1331) Q. I show you Defendant's Exhibit BI for identification, Mr. Miller, and ask you if you can tell us whether or not this card comes from—first, tell us what it is. A. It is a signature card for a regular checking account.

Q. Can you tell us whether it comes from the files of the bank? A. Yes.

Q. Can you tell us whether this record was kept in the regular course of business at the bank and whether it was the business of the bank to maintain such records in its regular course? A. Yes.

Q. You say this represents a signature card of a depositor? A. Regular checking account.

Q. Regular checking depositor.

Mr. Rosenblum: I offer BI in evidence.

Mr. Hallinan: I have no objection.

(Defendant's Exhibit BI for identification received in evidence.)

Q. Mr. Miller, will you tell us, please, who (1332) opened what has been referred to as the stiff account in the name of Frank Williams? A. It was opened by RHL, Mr. Littlefield.

Q. It appears right on the signature card? A. Yes, sir.

James W. Miller—Defendant—Re-direct

Mr. Rosenblum: Do you have any signature card for Newman?

Mr. Hallinan: No, we don't, Mr. Rosenblum.

Mr. Rosenblum: May I pass this around very quickly among the jurors?

The Court: All right.

Mr. Rosenblum: May I direct the jury's attention to the item, "Opened by RHL".

May I also pass around the opening sheets at the same time?

The Court: All right.

(Mr. Rosenblum hands to jury.)

(1333) Mr. Rosenblum: Mark this for identification, please.

(Defendant's Exhibit BJ for identification marked.)

Mr. Rosenblum: Counsel for the Government has agreed I may use a photostat.

By Mr. Rosenblum:

Q. Mr. Miller, I show you BJ for identification, 57 in evidence and 58 in evidence, and ask you if you can tell us who opened those accounts. A. The two signature cards appear to be like duplicates. They are both made at the same time when the account was opened. It shows on here that the account was opened by RHL, Mr. Littlefield.

Q. Mr. Littlefield? A. Yes.

Q. Take a look at the opening sheet. A. You couldn't tell anything from the opening sheet except by knowing his handwriting.

Q. What would you say it is? A. I would say, as near as I can recall, this is his handwriting.

Mr. Rosenblum: I offer BJ for identification in evidence.

(1334) Mr. Hallinan: No objection.

(Defendant's Exhibit BJ for identification received in evidence.)

Mr. Rosenblum: May I pass these to the jury? I direct the jury's attention to the initials RHL where the opening appears. This is the opening sheet and these are the two opening signature cards (handing to jury).

By Mr. Rosenblum:

Q. Mr. Miller, I show you Government's Exhibit 66 which is in evidence, which was read yesterday, if you recall, to the jurors, and is a memo in your handwriting with reference to the Mishel Wine and Liquor Corporation which gives the address, sold out Feb. 1950, W. B. Gordon, William Gordon, President, 11 West 42nd Street, Incorporated, as Bennett Liquors, 1-12-50.

Will you tell us, please, when you prepared that memorandum in point of time as against the date of the loans, one being testified to having been made on March 2, 1950, and the other on March 9, 1950? A. I would say that this was made sometime after June of 1950, between June of 1950 and possibly March of 1951.

Q. That means several months after the loans had been made?

(1335) Q. And will you tell us the source from which you obtained this information? A. This information was taken out of Dun and Bradstreet report which we received in June of 1950.

Q. Do you recall, Mr. Miller, yesterday being questioned about a 20 per cent of the loan being made at the bank. Let me see if I can put it differently.

I think you said after a loan is made that the bank desires or wants the person who had obtained the loan, the depositor, to maintain about 20 per cent of the amount of the loan in the depositor's bank account? A. That's correct. We call that a working balance.

Q. And do you recall whether or not the amount in the account of the Mishel Wine and Liquor Company before the loan was very, very low? A. Yes.

Q. And then based upon the information made available to you you recommended a $5000 loan to the liquor company and then the executive committee recommended another $5000 loan? A. Yes. Well, I made a $5000 loan and recommended another one to the committee for $5000 which they approved.

Q. And the committee approved, is that right? (1336) A. That is correct.

Q. Thereafter, for a while, was there in the account 20 per cent of the loan maintained? A. The average balance card shows that there was $2000 balance maintained.

Q. And then after that do the records show that it went down to something like $2.35 or something? A. Well, I don't know what it went down to, but it shows on the average balance card that the balance went down.

Q. Well, do you remember Mr. Hallinan asked you yesterday whether or not, I think at the end of March, the amount of the balance was a few dollars? A. I remember him saying that, yes.

Q. But that was after there had already been maintained, according to the average balance card, 20 per cent in the loan? A. That is correct, yes.

Q. In the bank itself? A. That is correct.

Q. Was that after Mishel went bad? A. He went bad sometime in the latter part of March, yes, I would say so.

Mr. Rosenblum: If your Honor is going to take (1337) the recess I may not have anything further

of this witness at the moment. Unless you wish to examine him, if he wants to.

The Court: I think we will go another fifteen minutes now.

Mr. Rosenblum: I have another witness who will be here in about fifteen minutes.

The Court: You are through now, are you?

Mr. Rosenblum: Yes.

Mr. Hallinan: I have no further questions, your Honor.

The Court: All right. Step down, Mr. Miller.

Mr. Hallinan: I think this would be a good time to read this, however.

The Court: I think Mr. Rosenblum is trying to make up his mind whether he wants to ask some more questions.

Mr. Rosenblum: If I may have time for my witness to come—he is on his way.

The Court: I will tell you this right now, I am not going to wait for anything from here on in. And, Mr. Miller, you may step down, as Mr. Hallinan has something to read. And that goes for the both of you; if your witnesses aren't here from now on we are going to (1338) get along without them.

You go ahead and read your document and we will take our recess after that.

(Witness left the stand.)

Mr. Hallinan: I am going to read from Government's Exhibit 71, portions of which have been admitted or received in evidence.

The caption of Government's Exhibit 71 reads as follows: "City Court of the City of New York. County of New York: The Pennsylvania Exchange Bank, Plaintiff, v. Rialto Realty Corporation, Irving Spieler and Irving Mishel, Defendants."

Excerpts from Government's Exhibit 31 Read into Record

Then below that, another caption:

"Rialto Realty Corporation, third party plaintiff, vs. Irving Mishel and James W. Miller, third party defendants.

"Examination of plaintiff, The Pennsylvania Exchange Bank, by its president, James W. Miller, taken by defendants Rialto Realty Corporation and Irving Spieler, pursuant to order of Mr. Justice Henry S. Schimmel, dated October 16, 1950, and The Pennsylvania Exchange Bank, 20 West 48th Street, New York 19, N. Y. on April 19, 1951, at 2.30 P. M.

"Appearances: Dorff & Levy, Esqs.

"Attorneys for plaintiff and third party defendant (1339) James W. Miller, 8 West 40th Street, New York 18, N. Y. by Bernard Weiss, Esq. of Counsel.

"Samuel Mezansky, Esq., Attorney for Defendants and Third Party Plaintiff Rialto Realty Corporation and Irving Spieler, 350 Fifth Avenue, New York 1, New York.

"James W. Miller, called as a witness by Defendants Rialto Realty Corporation and Irving Spieler, being first duly sworn by the Notary Public, testified as follows":

I go to Page 5.

"Q. Do you know a person by the name of Mortie or Mortimer Schnabel? A. Mortimer Sennabel?

"Q. Yes. A. No.

"Q. Let me try to describe him to you. Would it help your memory if I told you that he was a person that had a harelip and was a messenger in the employ of Irving Mishel. A. No, it doesn't.

Excerpts from Government's Exhibit 71 Read into Record

"Q. It doesn't refresh your recollection? A. Not a bit, no.

"Q. Would it further help to refresh your recollection (1340) if I were to tell you that he was sometimes known and described as Mickey? A. No."

I am now reading from Page 7:

"Q. Well, do you know any persons in the employ of the defendant Irving Mishel? A. No."

Going to Page 28:

"Q. To your knowledge, did he have any dealings or transactions with any other officer of the bank?"

Are you following this? Will you agree that "he" in that question refers to Mr. Mishel?

Mr. Perry: Where is that?

Mr. Hallinan: On Page 28, near the bottom.

"Q. To your knowledge, did he have any dealings or transactions with any other officer of the bank?"

Mr. Perry: Yes, that is Mishel.

Mr. Hallinan (Continuing reading):

"Q. To your knowledge, did he have any dealings or transactions with any other officer of the bank? A. I believe he had most of his dealings with me."

On Page 47:

"Q. And you say you have never met this Mortie Schnabel?"

Excerpts from Government's Exhibit 71 Read into Record

(1341) Mr. Hallinan: There is no answer to that. The following——

Mr. Perry: Excuse me. You are jumping from place to place, aren't you?

(Mr. Perry conferred with Mr. Hallinan off the record.)

Mr. Perry: Oh, I am sorry.

Mr. Hallinan (Continuing reading):

"Q. Did Irving Mishel, to your knowledge, ever send over a messenger boy to make deposits for him? A. Frankly, I don't take deposits, so I wouldn't know."

Mr. Perry: There have been portions closely, as a matter of fact, following the questions——

The Court: Do you want to read anything?

Mr. Perry: Maybe I——

The Court: Surely.

Mr. Perry: On Page 7 Mr. Hallinan read one question and one answer:

"Q. Well, do you know any persons in the employ of the defendant Irving Mishel?"

And the answer is, "No." And Mr. Hallinan stopped there. There is another question and answer I think should be read. The other question immediately (1342) following:

"Q. Did Irving Mishel at any time, within your knowledge, cause certain moneys to be brought to the bank for deposit or for other purposes by a messenger in his employ? A. It could have been. I wouldn't know."

Page 28, Mr. Hallinan read one question and one

Excerpts from Government's Exhibit 71 Read into Record

answer. The question and answer Mr. Hallinan read were as follows:

"Q. To your knowledge, did he"—meaning Mr. Mishel, we conceded.

"Q. —did he have any dealings or transactions with any other officer of the bank? A. I believe he had most of his dealings with me."

Immediately following that is another question and answer which we think should be in, your Honor.

Mr. Hallinan: I agree.

The Court: Yes.

Mr. Perry: And the other question is—if you agree, you should have read it.

The Court: Go ahead.

Mr. Perry: The other question is:

"Q. Do you know whether he had any dealings with Mr. Gallagher? (1343) A. No. I don't believe he did."

Page 47 Mr. Hallinan read the following question and answer:

"Q. Did Irving Mishel, to your knowledge, ever send over a messenger boy to make deposits for him? A. Frankly, I don't take deposits, so I wouldn't know."

Immediately following that is another question and answer as follows. These were not read to you.

"Q. Did Irving Mishel ever deliver or cause to be delivered any papers, or other documents, to you by a messenger boy? A. Oh, he could have."

The Court: Anything else?

Mr. Hallinan: I have nothing else.

Mr. Perry: I think that completes it.

The Court: Everybody is happy now. We will take a ten-minute recess. And don't discuss the case.

(Short recess.)
(1344) The Court: Bring in the jury.
(Jury enters courtroom.)
The Court: Call your witness.
Mr. Rosenblum: Mr. McAvinue, please.

JOHN A. MCAVINUE, JR., called as a witness on behalf of the defendant, being duly sworn, testified as follows:

Direct examination by Mr. Rosenblum:

Q. What is your profession, Mr. McAvinue? A. Attorney-at-law.

Q. And for how long a time have you been practicing as an attorney? A. Sixteen years.

Q. And were you at one time a member of the staff of the District Attorney of New York County? A. I was.

Q. Was that during the time when Mr. Hogan was the District Attorney? A. It was.

Q. Will you tell us what years you served in that capacity? A. From 1942 to 1956.

Q. '42 to '56? A. That's correct.

(1345) Q. Are you now practicing law? A. I am.

Q. I have talked with you about this case, have I not? A. You have.

Q. Have you talked with Mr. Hallinan about it? A. I have.

Q. Have you talked with Mr. Malinky about it? A. No, I don't believe so, not recently.

Q. During the time you worked on the case and he worked on the case? A. That's correct, yes.

Q. Were you in charge of an investigation and thereafter a prosecution involving one Irving Mishel? A. I was.

John A. McAvinue, Jr.—for Defendant—Direct

Q. Can you tell us when for the first time any person ever spoke to you about Mr. Mishel's swindles?

Mr. Hallinan: I will object to this, your Honor. May we approach the bench, please?

The Court: Yes.

(The following proceedings took place at the bench, not in the hearing of the jury.)

Mr. Hallinan: I am going to object to any broad questions about Mr. Mishel. The purpose of (1346) this witness I can see if it is restricted and limited to questions as to what statements Mr. Mishel made. Then I will not object. But I will object to any wholesale question about what he knew about Mishel or the investigation he made of Mishel or anything of that nature.

The Court: All right?

Mr. Rosenblum: Yes, sir.

(Proceedings were resumed within the hearing of the jury as follows.)

Mr. Rosenblum: Will you read the question, please.

(Question read.)

Mr. Hallinan: I renew my objection.

The Court: I will sustain the objection.

Q. The same question in connection with the Pennsylvania Exchange Bank.

Mr. Hallinan: Objection. It is too broad, your Honor.

The Court: I will sustain the objection.

Mr. Rosenblum: Exception to both of your Honor's last rulings.

Q. Tell us, Mr. McAvinue, was there a time when a person representing the Pennsylvania Exchange Bank

(1347) talked with you with reference to the loans obtained by Mr. Mishel from the Pennsylvania Exchange Bank in March of 1950? A. Yes, there was.

Q. Can you tell us who that person is? A. Thomas J. Reedy.

Q. You have known Mr. Reedy, have you not? A. I have.

Q. For how many years have you known him? A. 25.

Q. I think he is a classmate of yours? A. No, he is a little older than I am. He and I were in the same law office at one time.

Q. He is a lawyer? A. He is.

Q. Do you know that he was then a high official of the Pennsylvania Exchange Bank? A. I did.

Q. And will you tell us about when that was when you say the first person that ever spoke to you about the subject matter I called to your attention? A. May 1950.

Q. Tell us what was said.

Mr. Hallinan: No. I will object to this (1348) on the ground of hearsay, your Honor.

The Court: Sustained.

Mr. Rosenblum: Exception.

Q. What date did you give? A. May 1950.

Q. May 1950; is that correct? A. That's correct.

Q. Thereafter did you speak with Detective Barney Ridge regarding the same subject matter?

Mr. Hallinan: I will object to this on the ground relevancy, your Honor.

The Court: I will sustain it.

Mr. Rosenblum: Would your Honor hear the end of my question? Regarding the same subject matter.

John A. McAvinue, Jr.—for Defendant—Direct

The Court: Whether he spoke with somebody else?

Mr. Rosenblum: Yes.

The Court: I will sustain the objection.

Q. Did you, during the course of your investigation, talk with Mr. Mishel? A. I did.

Q Did he ever tell you that he attended a meeting which was also attended by Mr. Gallagher of the Pensylvania Exchange Bank and Mr. Miller of (1349) the Pennsylvania Exchange Bank whereat there was a discussion regarding Mr. Mishel being allowed to carry on illegal transactions with Mr. Miller? A. No.

Q. Did Mr. Mishel ever tell you that he sent money to Mr. Miller through any person? A. No.

Q. Specifically, through Sam Siegel? A. No.

Q. Through Norton Schnabel? A. No.

Q. Through Irving Mickey Rosenberg? A. No.

Q. Or any other person? A. No.

(1350) Q. Did Schnabel ever tell you whether or not he delivered money to Mr. Miller?

Mr. Hallinan: I object to this, your Honor.

Mr. Rosenblum: May we approach the bench, your Honor?

The Court: Yes.

Mr. Hallinan: I will withdraw my objection, your Honor.

The Court: All right.

A. No.

Q. Did you have a talk with Mr. Schnabel regarding the matter of bringing money to Mr. Miller? A. I did.

Q. Just tell us what that is. A. Mr. Schnabel—I must preface it by saying he was cooperating with the District Attorney's office——

Colloquy of Counsel

The Court: I think I will strike that on my own motion. Go ahead.

A. Mr. Schnabel came to my office and told me that Irving Mishel had asked him to execute an affidavit——

Mr. Hallinan: I will object.

Mr. Rosenblum: Wait.

(1351) Mr. Hallinan: No. The thought just occurred to me—may we approach the bench just briefly, please?

The Court: Yes.

(The following proceedings occurred at the bench out of the hearing of the jury.)

Mr. Hallinan: The thought should have occurred to me before. Schnabel never testified he brought down money. Schnabel testified he brought down envelopes. It was Mishel who said——

The Court: We will strike it.

Mr. Perry: Are you ruling on that, Judge?

The Court: Yes.

Mr. Perry: Then I say to you, this testimony from Schnabel was brought out after Mishel had testified about sending money down to Mr. Miller. To us it is clear, I respectfully suggest——

The Court: I see what you mean.

Mr. Perry: I respectfully suggest it is clear that the implication is there. If Mr. Hallinan wants to say now to this jury that he didn't intend to leave any impression that Schnabel brought money down, that is all right. Otherwise that leaves us (1352) at a terrible disadvantage.

The Court: That is a matter for argument. I will take this, but I want it limited; I don't want any long speech that he is starting to give now about cooperation and everything else.

John A. McAvinue, Jr.—for Defendant—Direct

(The following proceedings in open court, in the hearing of the jury.)

The Court: Did you ever ask him the question whether he brought money to Mr. Miller?

The Witness: No.

The Court: All right. Go ahead.

Q. Did you have any talk with Mr. Schnabel with reference to what Mr. Mishel wanted Mr. Schnabel to say in that regard?

Mr. Hallinan: I object to this, your Honor; clearly irrelevant.

The Court: Yes. I will sustain the objection. In other words, if you want to develop that line you do it with the witness directly and not by hearsay.

Mr. Perry: May we be heard on that?

The Court: Yes.

(The following proceedings at the bench out of the hearing of the jury.)

(1353) Mr. Perry: I say the situation under which Schnabel testified is clear, I suggest it is clear, that he was bringing money down. Now Schnabel came to the District Attorney—may I finish for the record, your Honor? If you deny it we will have it on the record. Schnabel came to the District Attorney and said to him that Mishel had asked him to sign a false affidavit that he gave money to Miller, and he asked Mr. McAvinue whether or not he should sign it, and Mr. McAvinue said, "If it is false you are subjecting yourself to a perjury charge, and if it is true you have no concern."

The Court: You had better cross-examined him about that when he was on the stand. You could have cross-examined Mr. Schnabel.

Mr. Hallinan: That is right.

The Court: Schnabel can testify to it of his own knowledge, but Mr. McAvinue can only say what Schnabel told him as a matter of hearsay.

Mr. Perry: I think we asked Mr. Mishel that and I believe your Honor stopped us. I wouldn't want to state that as a fact, but it was my impression that you stopped us.

The Court: I would doubt that I did. (1354) But you can check that. Anyhow, this is not the proper way to do it. This is something that you can ask Schnabel because he knows what Mishel told him. This man doesn't. He only knows what Schnabel told him. Schnabel might have been lying about it.

Mr. Perry: That may be. But it should be allowed for what it is worth.

The Court: I don't think so.

Mr. Perry: We except.

(The following proceedings in open court in the hearing of the jury.)

The Court: Objection sustained.

Q. Did Sam Siegel ever tell you that he delivered money to Mr. Miller?

Mr. Hallinan: I object to this, on the face of it.

The Court: I think you had better lay the foundation.

Q. Did you have discussions with Mr. Sam Siegel regarding Mr. Mishel's relationship with Mr. Miller? A. No.

Q. Did you have any talk with Mr. Schnabel regarding the relationship of Mr. Mishel with Mr.(1355) Miller? A. Yes.

Q. Will you tell us whether or not Mr. Schnabel ever said that he brought money to Mr. Miller?

John A. McAvinue, Jr.—for Defendant—Direct

Mr. Hallinan: I object.

The Court: We have been over that. I sustain the objection to it as repetitious.

Q. You said before you had a conversation with Mr. Schnabel. Tell us what that conversation was.

Mr. Hallinan: Oh, no.

The Court: I will sustain the objection.

Mr. Rosenblum: Exception. No further questions.

Mr. Hallinan: I have no questions, your Honor.

The Court: All right. Thank you, Mr. McAvinue.

The Witness: Thank you, Judge.

The Court: Next witness.

The Witness: May I be excused?

The Court: Yes, you are excused.

Mr. Rosenblum: May I just go out to see if the witness has arrived?

(Mr. Rosenblum left the courtroom.)

(1356) The Court: There was an inquiry from one of you as to whether this case was going to go into next week. You never know what is going to happen on a lawsuit, but my guess is that it will not, in other words, we will finish this week.

KENNETH RAYBURN, called as a witness on behalf of the defendant, being duly sworn, testified as follows:

Direct examination by Mr. Perry:

Q. Mr. Rayburn, where are you employed? A. Pennsylvania Exchange Bank.

Q. In what capacity? A. Chief clerk.

Q. For how long have you been employed there? A. Not quite seven years.

Q. When did you start? A. February 1950.

Q. Mr. Rayburn, to get us moving along a little faster, in February of this year did you have occasion to be in the storage room of the Pennsylvania Exchange Bank? A. Yes, sir.

Q. Will you tell us, please, what you were doing there? (1357) A. Well, at the time we were putting in a new check printing system, so we had a large cabinet that was set near a corner or wall which we had to move, and in moving this cabinet in that corner there was a lot of objects, waste objects and unused signs, and also two pictures, which we didn't know at the time what they were. But we tore the wrappings to examine them, and we found out one looked like a lithograph and the other was a portrait or a photograph portrait.

Mr. Hallinan: I will object to these. May we approach the bench, your Honor?

The Court: Sure.

(The following proceedings took place at the bench, not in the hearing of the jury.)

Mr. Hallinan: This is obviously rebuttal on the painting. There is nothing to rebut. My question is not evidence. Mr. Miller denied it.

The Court: What about that?

Mr. Perry: This is the picture. We want to put it in evidence and show that the whole fabric of Mishel's testimony is false.

The Court: He did not testify about this.

Mr. Perry: But he has testified about being in the deal with Miller.

The Court: I do not think he said anything about the

picture. He asked Mr. Miller about it and is bound by his testimony, as I see it.

Mr. Perry: I have been in and out of court and I lost track of some of the links.

(To Mr. Rosenblum) How was this painting brought out, Mr. Rosenblum?

(1359) Mr. Rosenblum: I think Mr. Hallinan questioned him, questioned Miller, about Mishel bringing some painting to him and trying to get a loan on it.

The Court: He said he did not.

Mr. Rosenblum: What?

The Court: Mr. Miller denied that Mishel gave him any painting. He said he brought it to the bank for the purpose of a loan.

Mr. Rosenblum: I think he said he did not give him a loan.

The Court: He tried to get a loan on it, but Mr. Hallinan did not get what he wanted. He is bound by Miller's testimony. We don't need to go any further on the subject.

Mr. Rosenblum: I see.

The Court: It is a collateral question. He could not put this in if it would help him.

(Proceedings resumed within the hearing of the jury as follows.)

Mr. Perry: In view of your Honor's ruling and Mr. Hallinan's objection, we have no further questions to ask this witness.

The Court: Thank you, Mr. Rayburn.

(Witness excused.)

(1360) Mr. Rosenblum: The defendant rests.

The Court: Does the Government rest?

Mr. Hallinan: The Government rests, your Honor.

The Court: I will excuse the jury until 10.30 tomorrow morning, and don't discuss the case at this time. Be very

careful on it. Do that. Don't let anybody discuss it with you.

(Jury leaves courtroom.)

The Court: All right. Do you want to renew your motions, Mr. Perry?

Mr. Perry: Your Honor, we are in somewhat a better position at this time. We have given your Honor a couple of briefs. But at the close of the entire case, your Honor, the defendant moves for a judgment of acquittal on the grounds that we have urged at the end of the Government's case, to wit, first of all, your Honor, we say the Government has failed to establish a prima facie case in that it has failed to establish, first of all, that the bank was a paying agent, secondly, it has failed to establish that this was a matter within the jurisdiction of the Fiscal Service of the Treasury Department, which element is a prerequisite to the establishment of a prima facie (1361) case.

Our second ground for asking for a judgment of acquittal, your Honor, is that the venue of this action is improperly laid in the Southern District; it should be laid either in Chicago or Washington, D. C., where the letters were received, the three letters that are the basis of the first, second and third counts.

In passing, I wish to note to your Honor there is no question about waiving that right to claim fault of venue because we did not get the information on which this motion is based actually until the opening of the Government's case when we found out the theory of the case. We did not know before that it was based on letters, oral testimony or a combination of both.

The third ground for judgment of acquittal, your Honor, is that the first and second counts as charged in the indictments are not supported by the alleged false statements that were made.

Renewal of Motion for Judgment of Acquittal

(1362) I have references to the letters of December 26, 1951, which is the basis of the first count, and April 4, 1952, which is the basis of the second count.

In the brief that has been served upon your Honor and upon Mr. Hallinan, we pointed out that the crime of false statements is in essence a variation of the crime of perjury—they are both the same, actually—and that a crime of perjury would be based on the alleged perjurious statement. As far as the first count is concerned, the alleged false statement is that we were informed by the bonds were cashed. That is the letter. The charge is that the statement was an affirmative statement that the bonds were cashed in accordance with the procedures.

I say the crime, if it is a crime, as proven by the letter of December 26 is certainly not the crime, the alleged crime, as charged. To that extent, the proof does not support the count and there should be a judgment of acquittal as to the first count.

The same reason applies to the second, because therein the charge is, "We believe," and whether or not there would be a false statement there would be contingent upon whether that belief is false. That is not the crime charged in the second count which charges a flat statement (1363) that the bonds were properly cashed.

For those reasons, your Honor, I feel that the entire Government's case should be set aside and the defendant acquitted, and, in particular, I directed my latter motions with respect to the first and second counts. In any event, the proof does not support those counts.

The Court: Do you have anything you want to add, Mr. Hallinan, to what you said?

Mr. Hallinan: No, I do not, your Honor.

The Court: Well, I am going to reserve decision on your motion. I will decide it tomorrow morning the first thing. I would like to look into a few things.

Just so no one will be caught unprepared, my tentative feeling is that I am going to deny it, so that we will go ahead and go to the jury on all three counts. So both of you be ready to sum up on the three counts. If I conclude contrary between now and tomorrow morning, I will make an apropriate disposition of the motion at that time. Don't let me forget to dispose of the motion.

Mr. Perry: Do you plan summations tomorrow?

The Court: We will sum up tomorrow. Do you want two hours?

(1364) Mr. Rosenblum: I don't know. You said I could take the morning and then Mr. Hallinan will take the afternoon. If I should finish much before, then you can make such adjustments. I haven't figured the time.

The Court: I would then consider giving the case to the jury tomorrow. If you could sum up in an hour, fine.

Mr. Rosenblum: I couldn't.

The Court: I don't like to give a case to a jury in the afternoon.

Mr. Rosenblum: We have been moving so quickly.

The Court: I would guess you want an hour, an hour and a half.

Mr. Rosenblum: Two; it may go a little more, a little less.

The Court: As an outside limit, I will fix two hours for both. In other words, I will stop you if you exceed two hours. We will take an hour, a ten minute recess, an hour, you in the morning and Mr. Hallinan in the afternoon, and I will charge on Friday.

Mr. Rosenblum: We will have two hours and ten minutes in the morning?

The Court: Ten minutes will be the jury's recess. (1365) You should be through by 12.40.

Mr. Hallinan: I have one more matter, your Honor. I forgot to do it.

The Government is going to move now to strike the redemption forms—what is the number of the exhibit?

The Clerk: C for identification.

Mr. Hallinan: C for identification on the grounds that at the time——

Mr. Perry: D is in. C for identification. C is in, isn't it?

The Clerk: No.

The Court: Frankly, I am not sure. We will find out.

The Clerk: C is identified. C-1 and then through to 43 we pre-marked.

Mr. Hallinan: C-1 is the huge batch.

The Clerk: C is the batch of them.

Mr. Hallinan: Then the photostatic copies, your Honor ruled on that, and it was not admitted.

The Court: Wait a minute. It seems to me at one point D was in or on the brink of going in.

Mr. Perry: It was in. The D batch went in. The problem was when I offered specific ones of the big batch, because the big batch was used in cross-examination (1366) by Mr. Hallinan and used on direct examination by me.

Mr. Hallinan: Just about four of them.

Mr. Perry: You used some of them.

The Court: What do you have?

The Clerk: I have C for identification. Then I started to pre-mark C-1 through C-43.

The Court: You started to go through C, didn't you, to mark specific ones?

Mr. Perry: Judge, here is my recollection. I do know during Mr. Brennan's testimony I offered the entire bunch of these then. It was my impression that they were received. In fact, I think Mr. Hallinan made no objection.

The Court: I think you are right.

Mr. Perry: Then after that, your Honor, Mr. Hallinan used a part of it—four, he says. I don't know how many—to examine Mr. Brennan on, four of the batch.

I tried to take single ones out of the big batch and that was where your Honor——

The Court: You had photostats?

Mr. Perry: Yes, Judge. Then I said I would have the originals marked in place of the photostats.

Mr. Hallinan: My motion is addressed to this. When I first——

(1367) The Court: "This" being C?

Mr. Hallinan: Yes, C. When I first did not object, I anticipated—I knew what the purpose of these was going to be—to try to make out a practice. They had the testimony of the witness Brennan as to a practice.

Now, I thought they were going to call people who could identify these. I went through the ones that Brennan could identify and had his initials on, yes. The rest I didn't. I think this batch now of and by itself without the testimony of the tellers who actually handled these transactions is meaningless, and the batch that you have here is just going to be very confusing to the jury. They have the testimony of witnesses as to the practice and procedure with respect to the cashing of bonds. That I have no objection to.

The Court: Certainly if I were ruling on the question de novo I would go along with you and I would not receive it.

Now, has any prejudice been done by having it come in and then striking it out, and, if so, can we repair it? Is there any testimony of Brennan you want stricken?

Mr. Perry: I am frankly at a loss. Mr. Hallinan admits he consented to admitting these, and then he used some of these. Whether he used four or forty (1368) is immaterial.

Mr. Hallinan: Four that had his initials on.

Mr. Perry: Whether he used 1 of them or a hundred of them, it makes no difference. The fact is you used items which were offered in evidence and received in evidence over no objection from you. You used it on cross-examination of the defendant's witness, and now we are faced with your saying you want to move to strike them out.

Mr. Hallinan: Yes, because there is nothing added to those that makes any sense with those.

Mr. Perry: I think the best evidence of any practice are the forms themselves.

Mr. Hallinan: That is precisely my point, your Honor.

The Court: I think that I will strike them as I will strike the answers of Brennan with respect to the four you cross-examined him about, if there were four, whatever they were. My own feeling was that the entire testimony with respect to them was of no great impact on anybody in the courtroom, and I do think that that mass of paper can only bring confusion and does not help us with respect to the material issues in the case. So I will strike them from the record.

(1369) Mr. Perry: May it be noted, your Honor, that we feel this does seriously prejudice the case because you may strike it from the record but I respectfully suggest we cannot readily strike it from the jury's mind as to these individuals.

The Court: I will give them any instructions you wish without commiting you to agreeing with my ruling. In other words, you oppose my ruling, but now my having ruled, I will give whatever instructions you feel will mitigate any prejudice to your side of the case as you see it.

Mr. Perry: Judge, I will examine the records with that in mind. I do not feel, your Honor, we can undue the damage in that way. If your Honor were to rule or if your Honor does rule, then I would ask for a mistrial.

The Court: My own feeling would be that they are not worth giving any instructions for. I do not think the jury has any comprehension of them and, therefore, any instructions would probably be just a waste because I don't, as I said, believe they made any impression on the jury; but if, as you look over the record, you see there is something you would like me to instruct them on, I would be glad to put it in.

Motion for Mistrial—Denied

Denial of Motion for Judgment of Acquittal

(1370) Mr. Perry: I will do that in any regard because your Honor may do that even though I disagreed with your ruling.

The Court: When we come back tomorrow morning, you call my attention to whatever you want me to do.

Mr. Perry: In any event, your Honor, in the face of your ruling, we will move for a mistrial.

The Court: I deny your motion.

(Defendant's Exhibit C withdrawn.)

The Court: Anything else?

Mr. Hallinan: No.

(Adjourned to 10.30 a. m., November 1, 1956.)

(1371)

New York, November 1, 1956;
10.30 o'clock a. m.

Trial resumed.

(The following proceedings in open court in the absence of the jury.)

The Court: One of the jurors was delayed and that is why we are a little late, but we won't cut down on the time.

I will rule now on the motion. I deny the motions which the defendant has made. I don't think I need to comment. At one point I think I said something about the failure to make the motion directed to venue earlier. I think I said, "Well, in any event, that is not crucial." As I read the cases, I think there was a waiver. In other words, I think venue here is proper anyhow. But I didn't want to have

anything I have said to suggest that I think that the motion was timely. I don't think it was. It could certainly have been made after the Government's opening, and I think that the letters which had been furnished before trial, coupled with the (1372) indictment and the dates in the indictment, put the defendant on notice as to what the representations relied on were. So I just want to add that to correct any misconception as to my position.

Mr. Perry: Just so our position is clear in that respect also, I remind your Honor, you say that we should have been put on notice by the dates of the letters, I remind your Honor that the allegations in the indictment are not the same allegations as appear in the letters, so that actually, I respectfully submit, that there was no being put on notice as to exactly where the charges emanated.

The Court: I will disagree with you on that. But we won't educate each other very much at this point by continuing to talk about it.

Mr. Hallinan: Your Honor, before the jury is brought in, may I make just a brief statement for the record, please?

The Court: Yes.

Mr. Hallinan: It has to do with Irving Mickey Rosenberg. I want the record to indicate that this is more in the nature of putting Mr. Rosenberg on notice. I informed Mr. Rosenblum on September 19, 1956 that the Government felt it could not call (1373) Rosenberg as a witness because he was then named in an Indictment C. 143-116, which I have called to your Honor's attention, where he was named as a co-conspirator with the defendant James W. Miller and other persons. At that time I furnished the telephone number of Mr. Rosenberg's attorney to Mr. Rosenblum, and since then I have learned that they have interviewed him.

Now, I just want to put Mr. Rosenblum on notice that if any remarks are made about Mr. Rosenberg's absence since he has been on notice since September 19 as to the Government's reasons for not calling him and that he was available—we made available the telephone number to Mr. Rosenblum—I will be fully prepared to answer it in my summation.

Mr. Rosenblum: I would like to say this, your Honor. I don't think I should be limited or cannot possibly be limited. Let us get this fact straight. Mr. Hallinan knows that no one in this world could have stopped him from calling him. He called Mishel, who was in that same indictment. Mishel at one time refused to answer certion questions. Rosenberg could have refused to answer certain questions.

(1374) Now, I make it more forcefully for this reason: It so happens he asked a question. I tried to get every witness I could into my office, talk with them. Siegel wouldn't come down, so I couldn't get him. Mr. Schnabel I was able to get. Rosenberg came down.

Now, he asked a question: Did you ever see Mr. Rosenberg? Mr. Miller truthfully said he saw him in my office. This jury is going to infer that if I had him in my office and I didn't call him there must be a reason I didn't call him.

Now, if the statement was correct that they could not call him, then I would say maybe there is even some basis to it. If a man is indicted, all he has to do is say, "I refuse to answer."

They could have called him and if he agreed to answer questions——

The Court: I do not understand that Mr. Hallinan is going to make any argument that you, by failing to call Mr. Rosenberg, are admitting or a failure to produce a witness is unfavorable to you. He wants to make sure you do not make an argument against him.

Mr. Rosenblum: I will make that argument. (1375) I will say if a witness is not called, let them give it such consideration as they think it deserves, because otherwise since he was in my office——

Mr. Hallinan: I say he was available to Mr. Rosenblum.

Mr. Rosenblum: All right, you can say that, if that is your only point, but when he puts me on notice that he couldn't call him—he makes the statement he couldn't call him, that is not a correct statement.

Mr. Hallinan: It is.

Mr. Rosenblum: It isn't. If a man answers questions, he can take his testimony. If, on the other hand, the man asserts his privilege against self-incrimination, then that is his job to do it.

Mr. Hallinan: The Second Circuit says we should not call a witness where he is going to invoke the Fifth Amendment.

Mr. Rosenblum: That is your problem.

Mr. Hallinan: That is the reason I could not call him. I did not want this other indictment to go puff, like that (snaps fingers).

Mr. Rosenblum: I am in the same position. (1376) You asked me to come down. I will come down and speak to you, but let us assume he had said, "I refuse. I invoke" —how can I get that across to the jury? My feeling is, and I think this may very well turn this case, and I say it very candidly, because here a record has been made by Mr. Hallinan that he places Mr. Rosenberg in my office——

The Court: He did not put Mr. Rosenberg in your office.

Mr. Rosenblum: He did, by the question he asked. I will give you the page if you want, your Honor. He said to Mr. Miller: "Did you ever see Mr. Rosenberg before this occasion when he was introduced to you at the time the Chernoff bonds were brought to you?"

"No sir."

"Did you ever see him since then?"

He said, "I saw him,"—first he said, "Rosenberg"—"Mr. Rosenblum's office."

So he brings out that he places him in my office. You know what the thinking of this jury would be. Why didn't I call him. That is so. I have got to meet that. I can't permit this jury to go away with the thought that I did not call him (1377) because he may have said something to me. I say right now what he said to me I think would have been helpful to me and we told that to Mr. Hallinan yesterday. Mr. Perry told him that yesterday.

Mr. Hallinan: I will also state for the record at this time that Mr. Rosenberg denied to me and denied to the Secret Service and the FBI and Mr. Malinky personally apart from other FBI agents that he was ever introduced as Nat Chernoff to Mr. Miller.

Mr. Rosenblum: He told me that that is the only occasion——

Mr. Hallinan: I am afraid of putting him in a position where the other indictment might be——

Mr. Rosenblum: I will state as an officer of the court that he was ready to testify he was introduced at that time when the testimony shows he was brought to Mr. Miller.

The Court: I will tell you both I do not see anything in this record as a basis for saying anything about what Mr. Rosenberg said to either of you.

Mr. Rosenblum: That I agree.

The Court: As to why he was not called, (1378) I do not see that there is any basis laid for arguing that either of you had the duty to call him or that an inference must be drawn one way or the other. If one of you goes into it, why, of course the other one will follow. I actually don't see on the record of this case any basis for arguing an inference one way or the other. That is the way it looks to me.

Do you feel you must bring that out?

Mr. Rosenblum: I feel very keenly that this jury are human beings. All they heard was that he was in my office. It naturally must follow if I did not call him he must have said something to me I did not like, and that does not happen to be the fact. I can state some other things he would have said, but I do not want to go into that.

The Court: I do not know what you are going to argue on the thing because there is nothing in the record to show why you did not call him.

Mr. Rosenblum: Of course not. That is the trouble. If we say nothing to them—there was nothing said about him being at their office.

The Court: You cannot say anything that is not supported by the record.

(1379) Mr. Rosenblum: I am only going to say it is up to them to draw any inference they care to and he can say the same thing, I suppose.

Mr. Hallinan: I am a little confused. The record reflects from Mr. Miller's answer that Mr. Miller saw him at Rosenberg's office.

The Court: The word was "Rosenberg." I thought there was a mistake, but then I thought maybe it was Rosenberg, so I kept my mouth shut.

Mr. Rosenblum: I am very happy that Mr. Miller had the good sense, and I know he is the kind of person who would answer the question truthfully, and that is why I think he said "Rosenberg." When he said it, he pointed over to me.

Mr. Hallinan: I do not remember that.

Mr. Rosenblum: It is quite clear, Judge. I will do this: If we can advise the jury—if that is agreeable to the Court—that the answer was, "Rosenberg," and does not mean me, that is all right with me. I wouldn't even be a

party to it, to tell you frankly, because I don't think I have a right to.

(1380) Mr. Hallinan: the record indicates very clearly what the answer was.

The Court: Do either of you want me to rule on anything?

Mr. Hallinan: No. I just wanted to put Mr. Rosenblum on notice.

The Court: All right. Go ahead.

Mr. Perry: All I was going to say, in view of your Honor's ruling in connection with the redemption forms you asked me if I would come in and you would strike it out—Mr. Rosenblum has had the minutes and I haven't had them—but I will call it to your Honor's attention before Mr. Hallinan sums up and ask you to strike out certain portions of the testimony.

The Court: Actually, the question he asked about were Mishel's accounts which in themselves would have had a relationship——

Mr. Perry: Who asked about?

The Court: Mr. Hallinan asked about the opening of the Helen Mishel account. When he cross-examined Brennan——

Mr. Hallinan: Yes, sir. I will say that was from that batch, about four or five, I believe, redemption forms that had his initials on them.

(1381) The Court: But didn't have any other connection with Mishel's case.

Mr. Perry: No, Judge.

The Court: Any questions as to the non Mishel redemption, any answer on the Mishel redemption slips should go out, I think.

Mr. Perry: Yes.

Mr. Hallinan: If I do refer to it I will just refer to the general testimony and practice.

Mr. Rosenblum: In connection with the other matter, I don't know that there is anything in this record which indicates that there is any basis that Mr. Hallinan knew that if Mr. Rosenberg were called that he would assert the Fifth Amendment, because he might not have.

The Court: I think that there is strong doubt as to the propriety of the United States Attorney calling any person under indictment as a witness in this case, I mean, under an indictment in its own office.

Mr. Hallinan: That was the primary fear.

Mr. Rosenblum: He did that in this case.

The Court: There was no compulsion, as far as I know.

Mr. Rosenblum: No. He did it in this case.

(1382) The Court: Look, Mr. Rosenblum——

Mr. Rosenblum: He called Mr. Mishel.

The Court: You cannot in any way argue against Mr. Hallinan Mr. Rosenberg's failure to walk into court voluntarily and testify, where Mr. Hallinan can't call on the sanction of this Court to compel the attendance of a witness; if he had asked me to compel Rosenberg to testify I wouldn't have done so. In other words, to me, a defendant in a criminal case has to come in voluntarily and testify or he doesn't come in. If he won't come in I won't make him come in. But where the subject matter is at all related, and I am not sure——

Mr. Rosenblum: I could say that if he had called Mr. Rosenberg, from what I know, Mr. Rosenberg would have come in and testified.

The Court: There is absolutely nothing in the record to show that.

Mr. Rosenblum: That is right.

The Court: We can argue on that.

Mr. Rosenblum: He put me on notice as to certain things, he has put me on notice. I want to say that I am an officer of this court and also——

The Court: There is a big difference between being put on notice as to an indictment pending in my (1383) own court and being put on notice as to an oral conversation you had in your office.

Mr. Rosenblum: Remember, he made this record here. He makes the record that there were three people brought money to Miller, and he calls two. Maybe he should have been careful not to put in any testimony as to the third. How can he on one hand put in the testimony by saying Mishel testified Schnabel brought money to Mr. Miller, Mr. Siegel brought money to Miller, Rosenberg brought money? He knows, then, that there isn't any way that he can try Rosenberg the same as he does the others, if that is his thinking that he couldn't bring him in.

Mr. Hallinan: There is a very good reason. Mr. Rosenberg, for reasons best known to himself, and completely understandable to me, says he didn't know Miller. He is named in a conspiracy count with Miller. Of course he doesn't want to know Miller. There are very good reasons why——

Mr. Rosenblum: For your information, your Honor, Mr. Rosenberg was in here and interviewed by Mr. Hallinan.

Mr. Hallinan: He was.

Mr. Rosenblum: Just a moment. And was forced, required to answer certain questions.

(1384) Mr. Hallinan: No forced, no.

Mr. Rosenblum: Oh, no. If you want to get a picture in, let us get it complete.

The Court: We will go along now and get the jury in. I just caution you both not to go beyond the record.

Mr. Hallinan: Your Honor, before they come in here are the requests to charge.

(Jury in box.)

Summation on Behalf of Defendant

The Court: All right, Mr. Rosenblum. I guess we can go ahead.

Mr. Rosenblum: May it please the Court, Mr. Hallinan, Mr. Foreman, ladies and gentlemen of this jury.

In the thirty-three years that I have been in this business, prosecuting and defending, I don't think I have ever had a feeling that I have in this case, that vagueness of feeling that I can't put my fingers on those things that I would love to in such a way that you could be certain that you are getting the assistance you need in trying to determine what the facts are in this case. It is principally due to the fact that I have to rely, of course, upon the record, and the answers which I get from the principal witnesses for the Government, "That maybe (1385) it is 46, 47, maybe 48, maybe something happened in 49." You get the feeling that you can't put your fingers in so that you could say to the jury, "Look, here is something. Here is where I can show you that he lied." And particularly that is true in these instances where there isn't another witness that you could say anything. He could say anything, ladies and gentlemen; he could accuse me, he could accuse you, he could accuse his Honor, he could accuse the District Attorney. He could do anything. He says, "This is what I say."

It is a question as to whether there is enough there to really support the statements and the accusations that he makes. I say it is so frustrating, so hard not to be able to put your fingers on something that you would love to, so that you could say to a jury, "Look, every incident that he took, every time that he took a position on something, I can show you just what I have, I have another witness, or I have a certain bit of proof in the form of a document or something." Now, we have some, thank God, and I think we have enough possibly to satisfy you as to what weight you should give to this witness. It is frustrating.

I forgot something. I usually thank a jury for being patient, but I forgot. I get all wound up. (1386) I do appreciate the extreme close attention that I noticed every one of you gave in this case. I don't like to go into anything more than that.

I say it is so frustrating. Even you take right now, you heard about five $1,000 Missouri Pacific bonds. The way Mr. Mishel said it he could leave the impression they were hot, stolen, warm, as he put it long—he used a lot of expressions. To this minute you never knew whether they were stolen bonds or they weren't stolen bonds. It would seem from the proof, the way it was put in by the Government, that all you had to do was to make a phone call. And I would like to know why, up to this very minute neither Mr. Hallinan nor Mr. Milenky, whom I have known, I have known Mr. Milenky for close to twenty years, twenty-five years, an experienced and able man, didn't take the precaution or didn't make the effort to see if they couldn't determine whether or not those five $1000 Missouri Pacific bonds were stolen.

Don't you think you ought to know that? Don't you think you would like to know that? Are you going to rely upon Mishel saying, "I said to Mr. Miller, 'It's long, or it's a little warm'"? To this very moment we are trying to get the facts and get at the truth in the picture.

(1387) Why is it that when Mr. Miller was on the stand Mr. Hallinan didn't say to him, "I direct your attention," and bring out from him, "That these things were stolen"? Particularly if it is easy to make a telephone call. You take the same thing with that $5000 Government bond which was cashed. I would love to know. There isn't a word in this record other than Mr. Mishel about his having, I think he used some language similar to the "warm" or "hot" or something. But he brought out that Miller said, "Give me the numbers," and all that sort of stuff.

And he talked about the deal, you remember, with Gude Winmill, a stock exchange house.

Don't you think that if it is possible to get that information and if it is easy to get it there would be an effort made to get it? Why is it that to this moment no books were produced by Mr. Hallinan or information from Mr. Milanky so that we can bring before you ladies and gentlemen the facts as to whether it was or was not stolen? It is very easy for a witness to say things but it is another thing after that to put your hands on it. See whether or not it stands up when you give it that scrutiny which it deserves to get. In particular, if it were easy to get that information.

(1388) Now you know, ladies and gentlemen, that the charge in this case is making false statements. As a practical matter you know that what the Government is really charging is that the essence of this crime is whether or not Mr. Miller was a partner of Mr. Mishel. That is the heart of this crime.

Mr. Hallinan: I will object to that, your Honor.

The Court. I will let counsel argue.

Mr. Rosenblum: Well, let me read to you what Mr. Hallinan said, and see if I misstated something to you. At Page 8 of this record.

"Mr. Hallinan:—" I am quoting word for word—"The essence of this case is the relationship between Irving Mishel and James W. Miller."

I don't think I was misleading you ladies and gentlemen. And then he goes on to say that there was a place and a time when this criminal conspiracy was born.

Right, Mr. Hallinan?

Mr. Hallinan: You can stop that right now, Mr. Rosenblum. Your Honor——

Mr. Rosenblum: All right.

Mr. Hallinan: Your Honor, addressing remarks to me——

Mr. Rosenblum: All right. I won't do it again.

(1389) The Court: Both of you are good lawyers and have done a good job. Go ahead and tell the jury what this case is about and quit this friction back and forth.

Mr. Rosenblum: He went on to say to you—again I am reading, although I transcribed it on a sheet of paper earlier this morning, about 3 or 4 o'clock—at a meeting in Gallagher's office Gallagher said to Mishel, "I know about you and your connections, and anything you want to do, legitimate or illegitimate, is all right with me."

And he then said to Miller, "If I am not here, Jim, you can take care of it."

I am now giving you from the record what was stated to you by Mr. Hallinan in his opening statement. So I say that that is the heart and the essence of this case. In fact, the testimony in this case, is from the dates that Mr. Mishel gave as to when he said he advised the authorities of all that he has testified, 1952, there was sufficient time to indict Mr. Miller on the principal phase of this case that he assisted, he conspired, that he uttered forged instruments. What are we doing, waiting six years? So you can catch a man by the heel and say on some technicality, "You used (1390) these words in a letter"? And that wasn't done.

Now, when Mr. Mishel took the stand he did reaffirm in some slightly different language about the meeting at which this criminal conspiracy came into being. I tell you, I asked him, "When". "Well, it was either 46, 47, 48." Once he said, "Maybe the early part of 48." And I think at one point I said, "Possibly 1949?" "Maybe I would say 48."

Take even three years. Do you really think or could you possibly believe that a thing as important as that Mr. Mishel didn't know?

Mr. McAvinue, a lawyer, with fourteen years as a prosecuting attorney, who worked and prepared this case for the District Attorney's office, told you yesterday that Mr. Mishel never told him of a meeting in Gallagher's office. And the terrific cross-examination to break him down was "no questions."

Don't you think Mr. McAvinue would be asked and the records could be obtained to show whether or not he was told. That he was lying about it? First consider all those elements.

I couldn't get him to give us an answer as to time, I couldn't get him to fix some circumstance, other than the fact that he said it was in Gallagher's (1391) office. But he wants you to believe and accept that that is the date and that is the time the conspiracy was born, if there was ever a conspiracy came into being.

And you may remember, because it is in the record, and if I am wrong Mr. Hallinan will bring it to your attention that I am wrong, and I don't know if you realize that, even though we had it fixed—he gave the time, the meeting in Mr. Gallagher's office, that is, 1946, 1947, 1948, and once he said he thought something about 1949. So you have a right to assume he followed what Mr. Hallinan told you in his opening was the date when this thing started. But do you know, if you analyze the record carefully, he says, "I was doing business with Miller before that time". (1392) That's his testimony. And I will show you how and when. It is in the record.

Do you remember I asked him to tell me all that he knew about his dealings with Mr. Miller, anything? You should know what I am asking. At least I hope so. And when he says something about "burnt money," he said, "That was before the meeting in Gallagher's office."

If I can get the page for you, I will have it for you, but I say to you right now that is the fact. That is in

the record. I don't want to take the time. My assistants may check it for me in the meanwhile.

I asked him when. He quibbled and he said before the meeting in Mr. Gallagher's office that he described, that he had a deal when Mr. Mishel says he brought in burnt money. I asked him, "What's wrong? Take a dollar bill. If it is burnt around the edges, you have a right to get new money. What does that mean?"

He said, "But not if you pay a fellow 10 per cent."

That is in the record. What is the truth? I say the truth is that neither of those things (1393) ever occurred, but he is ready and willing to say anything so long as he can get paid off when the day comes and he can be compensated for what he feels he has done. He told you he is hopeful. Do you really think he is doing it because he suddenly became a good, clean citizen and wanted to cleanse his soul? So that we start off practically at the beginning—he gives you the date of the conspiracy and we can all stand on our heads and you will never get a date other than that '46, '47 or '48.

Now keep in mind, as often has been said, give me a little piece of paper with ten words on it, but that is something in writing, and I will match it up against ten thousand or a hundred thousand words that someone can say. It is something that is definite. I will show you some things that are definite. So that I say to you ladies and gentlemen that if the essence in this case is really whether there was the partnership between Mishel, Miller and Gallagher, that if that falls, if you are not satisfied that that is so, this case should fall.

Now I think the best way that I can treat with that is to see what he has told us about the (1394) transactions that he has said he has had with Mr. Miller. If you recall—and also I say that that falls—when I said if you

are not satisfied with the fact that they are partners in crime, because, remember, the Government's position is, from the opening that was given to you, since they say the essence is a relationship between Mr. Miller and Mr. Mishel and the charge is making false statements, then you have to give Mr. Mishel's testimony that weight which would satisfy you that the statements made which were false were done to deceive the Government and done wilfully and were done purposely because he was a partner of his. So, you see, it ties into this entire matter, this entire picture. If you want to take the cold words as to whether or not the words were used properly or improperly, whether they were artfully used, I will treat with that later on, anyway.

So I think let us go for a moment to—I already covered the Gallagher thing. I might also point out, can it be that Mr. Mishel didn't tell Mr. McAvinue back in 1952 when he talked with him about this Gallagher so-called meeting when the conspiracy was supposed to be set up because Mr. (1395) Gallagher was alive and there would be another person to deny it? Mr. Gallagher died recently. It is right in the record. A pretty smart cookie, that fellow Mishel. He knows there isn't another witness. You watch and analyze all the things he has said and see whether you dare or should destroy a human being, a good, fine person, on Mr. Mishel's say so.

You recall I said in connection with the five $1000 Missouri Pacific bonds he left the impression there was something wrong. You ladies and gentlemen were led to believe it was part of the deal. You know, there isn't a word in the testimony that he said he gave Mr. Miller something. But analyze how clever he was. You think to yourselves whether you didn't have the impression that what he was saying was that there were five $1000 Missouri Pacific

bonds that had been put up as collateral which were stolen, forged, hot, warm, or whatever expressions he used. If you look at the testimony carefully, he doesn't say it but he leaves that impression of his dealings with Mr. Miller. And he never says—let's say that he gave him 10 per cent, 2 per cent, 30 per cent or a hundred percent. (1396) But if you analyze it, what was the deal? Let us assume they were stolen. He says he came in and he wanted to borrow $1300. He needed collateral, so he brought in collateral. It was put there on, I think it is, a 60 or 90-day loan, whatever was testified to. He paid off the loan, he got his bonds back. What is there about that that should in any way affect us? If anything, it just shows another transaction, legal, proper transaction, which took place, but you know best whether or not you were not led to believe that those bonds were crooked, were stolen or something.

Take the $500 bond. There he said that he paid Miller. Other than his word and his statement and his testimony that it was slightly long—I think he said slightly warm, indicating it was a hot bond, a stolen bond, and that Miller was engaged in an illegal transaction with him—outside of his word there isn't one bit of proof that that is so.

You remember yesterday I analyzed that and I took Mr. Miller right through the transaction. What did it show? That a man by the name of Mr. Littlefield who was discharged, who they discovered had been running a kite in the bank, handled that (1397) transaction from A to Z.

And I still say since he put in the words—"I called Mr. Miller and Mr. Miller said, 'Give me the numbers. I will call you right back.' He called back and said, 'I can take care of it for you.'"

What does it mean? Are you people just going to be deceived into believing from some impressions that have

been left that something is a fact? You are dealing with a human being here.

So that when he said tha , isn't it obvious he left the impression that Mr. Miller made a call some place and found out about—what is he going to find out? He found out that it's hot, that he wouldn't use it if he was a crook; right? Otherwise, what is he calling up for? Where could you call up? I asked him—no cross-examination—"Is there a place where you could call in order to get information?"

Those things are vital in a case to show you which way the truth really goes and in what direction you should consider and see who is telling the truth. Are we to say, then, that Gude Winmill, the stock exchange firm that cashed the $5000 bond, that they were in cahoots? Because if there was a (1398) place, they certainly, being in the business of buying and selling these things constantly—a bank has to go to them to make a sale—wouldn't they be the one who would check? And I still add to it on this one topic, and I will close with it, I don't know why to this very day—and I say you ladies and gentlemen are entitled to get it—we don't have proof as to whether that was a stolen bond or it wasn't a stolen bond. Because if it was a stolen bond, you would at least in some way be able—other than the statement of Mr. Mishel, because that could be proved. In the six years they have been investigating this case, they certainly could have found out whether it was stolen or not, and I say to you if that was stolen you would have heard it and you would have heard proof of it. So they want to rely upon the word of Mr. Mishel that he said, "It is hot and I gave Miller 10 per cent," because if it wasn't hot, why should he give him 10 per cent? He could go into a bank. Remember, they were giving him credit up to as much as thirty, thirty-five thousand dollars. A man couldn't

come in and bring in a Government security and get his money? It is just incredible that you ladies and gentlemen here (1399) have to sit now and wonder whether or not that was or was not a stolen security or a stolen Government savings bond. If it was, you would have had that testimony, you can be sure.

As to the burnt money, at page 343 Mr. Mishel testified, after we bring to his attention in the middle of the page about the meeting with Gallagher and Miller when the criminal conspiracy was supposed to have come into being. He says, "I recall that conversation.

"Q. Do you say that those things which you have testified about that occurred, which you say, were illegal, were done pursuant to that talk? A. They were done before that, too.

"Q. It was done before that? In other words, you say that you didn't start doing anything which was improper or illegal with Miller until—I withdraw that.

"You say now that before the talk that you had with Gallagher you were doing things with Miller which were illegal? A. Before this talk with Gallagher?

"Q. Yes. A. Yes. . . ."

(1400) He goes on: "I had some burnt money that was taken out of the safe that was cashed there and I paid for the cashing of it."

You heard the testimony that the duty of the officers in the bank was if someone brings in money which couldn't be identified, you couldn't get anything for it. Those that you could give the Federal Reserve, you get money in its place.

Then he quibbles about whether it was before or after and he ends up—I say:

"Q. You said a moment ago you knew it was before. A. The conversation with Miller and Gallagher I had—from the day I went into the bank I had an okay there

to do what I wanted. The fellow that took me in got me an okay."

In other words, as I said before, it is in the record to show that before the Gallagher talk he is supposed to have been doing things with Mr. Miller or with Mr. Gallagher or whoever he was dong things with, and still you were given the testimony that the criminal conspiracy was supposed to have come into being at the time I indicated when he said he had the meeting with Gallagher and Miller, you remember, walked into the room.

(1401) Now, you heard the testimony in that regard from Miller.

And then he said that Mr. Wilmot handled the transaction. Mr. Wilmot was on that stand long after Mishel testified. You didn't hear a single question put to Mr. Wilmot with reference to the cashing of those bonds from which you can draw any basis in addition to what Mr. Mishel said, any basis that you can draw to satisfy you that that was an illegal transaction, and Mr. Wilmot was on that stand—you remember the man who was the head teller—and not one question was put to him.

So again I say as to that we have nothing but Mr. Mishel, who says that for getting the good money for the burnt money, the money which he could use, which—remember that the testimony was that money could be obtained from the Federal Reserve on that money which you could turn in because it is identifiable sufficiently so they can issue new money in its place, and why anybody in this world should believe that if you are legally entitled to it, if you are legally entitled to it, and there was no testimony to show that there was anything about that transaction which made it possible or made it (1402) necessary for Mr. Mishel to say that he had to pay off. I think he said the transaction involved $16,000. What part of that was approved we still don't know. There

has been no testimony about it. Who would have stopped anybody? If it is illegal or improper, if it is 10 cents or ten million dollars, you can't put it through. If it is something you are entitled to get—remember, this is at a time you are trusting the fellow and giving him loans up to $35,000. What would be the need? Why say to somebody—is it something you couldn't put through? Is it like, you say, a hot bond or an instrument that is forged that you are fearful it may be developed, it may come out somehow? This is money. Let us assume he got it from a safe that was cracked. How would anybody know that? What would be his need for telling anybody that if he was legally entitled and if he wasn't legally entitled to it, why didn't they bring it out when Mr. Miller was on the stand? He said Mr. Wilmot was handling it. Why didn't they establish anything from him which would help you to decide whether or not you can consider there was a real basis and a need to give 10 per cent? Mishel wasn't giving any money away. Of that you can be (1403) sure. He was taking it.

You know, ladies and gentlemen, when you analyze the transactions with the exception of the Chernoff bonds, which I will treat with later, these are the transactions he testified about. I asked him to tell me everything that he did.

Now, there was—yes, one other there was. There are two things, the Chernoff and the stiff accounts. I have a special topic on that which I will treat with you, but other than those two this covers the dealings which he says he had with Mr. Miller.

Now, there was much made—they read to you from an examination before trial in the Rialto matter as to whether or not Mr. Miller said that he didn't remember Schnabel at that time and here he said he did remember him. It would appear as though the record was clear that

he came in here and said, "Yes, I knew Mr. Schnabel and I have always known him. I always knew who he was."

Then Mr. Hallinan brings to his attention, "But when you were examined in the Rialto case you said, when they asked you if you know Mr. Schnabel, the answer was no."

(1404) Let us see whether there is something in the record, something which I think was brought out by Mr. Hallinan, which gives you a reason why he said, "yes."

During the cross-examination of Miller by Mr. Hallinan the answer was, "I don't recall, no."

It refers to questions which were asked previously but I will read the part which follows that.

"But I do know that recently the name Norty Schnabel came up, and I asked Brennan, I said, 'Who is this Morty Schnabel.'"

This is what Mr. Hallinan is getting from Mr. Miller.

"And he said, 'Well, he is the fellow with a harelip, the big fat boy from Mishel's office.'

"Q. And that is what a few months back refreshed your recollection as to Norty Schnabel? A. Yes.

So that we have had reams and reams of testimony about his saying "No" on one occasion and "Yes" on another. Until I found that I didn't recall that there was an occasion when Mr. Hallinan had established by the questions that he put there (1405) was a basis it was recently, and Mr. Brennan was on that stand and that could have been brought out or he could have been questioned about that in greater detail but that is something which is in the record now as the basis why he knew the man.

I bring these things to your attention because there was so much said about it, reading it into the record, reading it to you, and from all the reading you get the impression that now he is saying, "I know Morty Schnabel" as though he has always known him and always remembered him

and at that time he said no, as though he lied at that time—either he is lying now or then.

When you look at the record, you have the part I just read to you when he gives the basis, the reason, the circumstances, when a short time back he said it was brought to his attention when he talked to Mr. Brennan. If they had any doubt about that, all they had to do was question Brennan or question Miller to get the details of it.

I say it because it is little implications like that which sometimes might have a serious effect when you consider what weight you wish to give to a witness' testimony.

(1406) In considering the weight that you want to give Mr. Mishel's testimony, there are a couple of points here I think I should bring to your attention. The record as it now stands is that Mr. Mishel said he had a safe deposit box with Mr. Gallagher and Mr. Miller, that he had access to it and that it was either Mr. Gallagher or Mr. Miller who had the other key. If you remember, he said, "Well, that was the kind of a bank you could walk into the safe deposit vault and do as you please."

You heard Mr. Brennan's testimony the guard has to open it just like they do in any other bank.

You recall that he said he came there and a box was taken out. That box was taken out and in its place he found a filing cabinet, a sort of filing cabinet, which was put in its place, a small one. The testimony, is, which has not been rebutted, that Mr. Miller said he has been with that branch since 1946, the day when the bank was opened, and that not a single box was ever removed. Do you think for a moment that the Government wouldn't know who put in those boxes so they can determine whether or not any was taken out? You saw the great detail they went to to find some infinitesimal detail which (1407) they thought was important. Do you think Mr. Malinky, as good an investigator as he is, wouldn't get in

touch with the company? Do you think that Mr. Miller could take a screwdriver and take out a box? And if there was anything to support it, I say I think it is their duty and their responsibility when it presents something to you which is possible of being looked into and determined, they have the responsibility to do so.

We know there are only certain safe companies. You go to the bank and you can quickly see who put them in. You can ask a question, you can ask Mr. Miller. And then all you have to do is to go to that company and say, "Did you take out a single box?"

Mr. Miller has sworn that not a single box has been removed, and I say to you it is their duty and responsibility before they permit a man like Mishel—they know him as well as you and I now know him—that before they permit a man like Mishel to make a statement as serious as that that is subject to being determined, that they have the duty and responsibility.

Remember one thing. There is no duty (1408) on the part of a prosecutor to get acquittals or convictions. His duty is to see that facts are adduced and it is a victory for him if it is an acquittal as much as it is a victory for him if there is a conviction if the Government has proved its case beyond all reasonable doubt. It is a victory If there isn't a conviction, it is still a victory because you know somebody has not been snared in by the testimony of Mishel so that a man and his family can be ruined.

I still say again they had a duty to find out about the Missouri bonds and also about the $5000 bonds so that you would know. And you ought to consider that when you are considering all the proof in this case.

Mr. Hallinan: I hate to object during a summation. I say we have gone just about as far as we should on the duty of a prosecutor, your Honor.

The Court: I think so. As a matter of fact, I think

I made my position clear in colloquy during the trial, that we were not going into certain lines of proof, and when you say that Mr. Hallinan presented certain things, I think you are doing an injustice. Those matters were gone into on your cross- (1409) examination.

You go ahead. I don't want to discuss the facts.

Mr. Roseblum: I don't think I agree with you as to that phase of it. These aren't items we covered.

Mr. Hallinan: It is, precisely.

The Court: I am talking about the safe deposit box.

Mr. Roseblum: You did not let me go beyond a certain point. He answered certain questions. I think I have a right to use them.

The Court: You don't have a right to say Mr. Hallinan presented it and he had a duty, therefore, to go ahead and investigate it and present proof on the subject.

Mr. Rosenblum: I think I have a right that the jury can draw any inference it wants. It is his witness, not my witness, who testified.

I also want to bring to your attention, you remember that Mr. Mishel said that the bonds, the Chernoff bonds, he gave to Mr. Miller and Mr. Miller put it in his desk, and then you heard the testimony that he had a key to his desk and there (1410) was another key in the duplicate rack right in that bank.

Can you imagine—are you ready to believe that Mr. Miller—let's assume if he were a crook—would take these forged Chernoff bonds and put them in his desk when there is a key available that can open his desk? Just give that some thought. See what consideration it is entitled to have in the light of the testimony that has been given here.

There is another thought that strikes me. Here is a man who has been a president of a bank, had 25 years' service with the bank. Can you imagine—take the Chernoff bonds. He—and I think everyone of us—knows,

whether it takes a week or a month or, as in this case, seven months, from your own experience you must know a day comes when, if you cash a stolen bond, the Government gets in touch with you and tells you. You try to think, does it make sense that a man in his position would permit a stolen bond to go through his own bank where he knows it must come back to plague him? Is the man a moron? Does he lack experience in what happens in these instances? Then he knows he is in a spot where he has to start explaining. (1411) Does it make sense? Just think of those things.

You might say, "All right, but he got five or six thousand dollars out of it."

Just figure with me for a moment. He had that $6684.50 face amount of bonds. He and Gallagher are supposed to be partners with Mr. Mishel. So their take would be $632 and some change—45 cents, I think. Split it in half and it will give you $330-odd as Mr. Miller's share. Add the $16 Mishel said when he let him keep $100 instead of the $84, the 10 per cent of the first bond cashed. So for $340-odd the president of a bank is going to put through hot bonds which must come back to plague him. Take 10 per cent. In your juryroom figure out that $6684.50, and you will see it comes to that $340-odd. Does it make sense? Is it logical? That is something you must, in your weighing the whole picture, see whether a man who has reached the point of being a president of a bank, a busy bank with two branches, for $330-odd, $340-odd, is going to put something through his own bank, foul the bank up, foul himself up, have to even get an answer if—would he put it through his own bank? (1412) Just as much as you can believe that if he was a crook he would permit anybody else to bring him envelopes with money. You think that out, too. Can you imagine it? He claims he met Miller at the Holland House, at Quo Vadis, a couple of times in the Time and

Life Building, where he paid him off, he met him in a restaurant, he met him at some bars and grills. Can you believe that he would say, "I will take money if you send it down with one of your messengers"?

Is is conceivable? Now Schnabel said he didn't know what was in it, so we have no proof as to that, but, of course, the inference is left there. Let us not fool ourselves about it.

Mr. Siegel said he brought it in on six occasions and he said he thinks on two or three occasions it may have been theatre tickets. This is in a period of two years. This is while he was employed. You look at the time he says he was employed there. And during that time he said six. I said, "Might it be more or less?"

He said, "Yes."

I said, "Would it be two or three occasions you brought money down?"

(1413) It is significant if you watch the testimony he said it was sealed. If you look at Mr. Mishel's testimony, he says sometimes it was sealed with the money, sometimes it was open. It is in the record. Mishel says sometimes it was open. Can you conceive or believe this either? The man should be in an insane asylum. If he is a crook, he is going to act like a crook. If Mishel is to be believed, then a payoff is being made to him on those two or three occasions that are left of Mr. Schnabel's in open envelopes, and Schnabel said they were sealed—no, in Siegel's case. Schnabel also said they were sealed. Mishel says sometimes they were open. It is right in the record.

And if he was meeting Mr. Miller—Mr. Miller said he never met him outside of the office. He said the Holland House. You look at his testimony. I asked him three or four questions. He said it might be, sure, and before you know it he was away from there. He gave a name. He said in the Time and Life Building, right in the

lobby. How do you prove a thing—how can I disprove a thing like that? You had the word of Mr. Miller, who said, "I never met him outside of the office."

(1414) And Mr. Mishel says, "I met him, I paid him money."

Why send it with messengers? Why send it in an open envelope, as Mishel said? Do people who are crooks act that way? If he is doing something that is all right with him, that it can be done with anybody that he pleases, he can bring in any of the messengers, just like he told you, if you remember, that Mr. Miller—here this is supposed to be a deal between Mishel and Miller with the Chernoff bonds, and when they go in the back and Rosenberg is supposed to be there, Mr. Miller is supposed to bend over his shoulder and say, "Don't sign it here; sign it here," as to the bonds, and then as to the redemption forms, "Don't sign it here, sign it here."

In other words, Rosenberg is in the deal now, too. And he is putting himself in a position where he is in a bank, going to go to a room near the vault, and he will say, "Sign it here, not there; sign it here, not there."

Anything can be said, but you have to weigh it to see whether you are ready, in the light of Mr. Mishel's testimony, to believe it.

Oh, yes, it strikes me. Do you remember (1415) there was Mr. Horan—that was the teller—who admitted he was short $700, and Mr. Miller, he said, had to do with his discharge, Mr. Horan who says that in a busy bank where he said there were hundreds—a teller has to handle hundreds of transactions, he remembers years later that he saw Mr. Rosenberg at Mr. Miller's desk.

Mr. Mishel testified himself that he was in the bank nearly every day and the tellers say they recall each time that Mishel was at a certain place sitting at the desk.

You know, they still hold jobs as bank employees. As far as Miss Graef is concerned, she said she was told by

Mr. Kennedy that Mr. Miller said cash these bonds and they were cashed. Mr. Lucey says he looked at the bond register and saw these bonds had been cashed before, so he cashed them. But Mr. Horan, who said things weren't running well for him at the end, there was some expression, things didn't go well, he couldn't hit it off, and he suddenly remembers some of these things. It is for you to say whether you think, in the light of the history, the timing and everything else that is involved here, whether or not a man could remember or (1415a) whether he is still hostile because he is bitter.

Also remember, too, it is so easy. These fellows, if they were careless or if they did things in a certain way—they are tellers—if they say, "We have the approval of an officer," it takes them off the hook. It takes them off the hook very quickly.

(1416) You remember, there is one other thing he said. See if this makes sense to you. Horan says that he received that redemption form. If you have Mishel's testimony read to you you will see that this testimony ends up, he says that the guard came back and said, "Horan doesn't want to cash the bonds," and then he came back again and then Mr. Miller, the second time, after that first trip, when he came back to him, he said he sent the bonds back again, he said, Mr. Miller is supposed to have said, "Tell him to take his hat and coat, go in the back and take his hat and coat; I am still the boss here."

Now, if you look at his testimony Mishel never says a word about redemption bond being sent over. There isn't a word about redemption bond. Mr. Horan talks about a redemption bond. And then he says that—and if you have that testimony read, if you want Mishel's testimony, I don't want to take the time, but it is in there——

Mr. Hallinan: I have to object again. I just ran across—it wasn't my recollection at all. Mr. Rosenblum

has just made the statement that Horan said there was $700 shortage in his account. There was no such statement made. There was $150 tops. That was Mr. Rosenblum's question. And if more references are going (1417) to be made to the record I think we ought to stick meticulously to the record.

Mr. Rosenblum: What page?

My recollection is that he agreed that they totaled $700.

Mr. Hallinan: It is right there in the record.

Mr. Perry: Just a minute.

The Court: His recollection is that he didn't dispute a figure but he never admitted that it totaled any amount. So we will go ahead.

Mr. Rosenblum: You say he didn't dispute a figure?

The Court: He didn't dispute a figure, whether it was $700 or not. I doubt if he ever admitted that——

Mr. Perry: No, but he did not dispute it, your Honor.

Mr. Rosenblum: "Q. Do you know whether or not over the period of fourteen months your shortages amounted to about $700? A. No, I didn't know that.

"Q. Do you know whether or not Mr. Brennan told you to resign or you would be fired? A. No. I asked Mr. Brennan, I told him I realized that I was having a lot of hard luck as far as working (1418) over the window goes.

"Q. You were having what? A. I was having a lot of hard luck over the window."

And then if you will continue you will see I asked him a question as to whether or not Mr. Miller had something to do with his resignng.

The Court: He wouldn't say that he had nothing to do with it. He never specified what.

Mr. Rosenblum: The testimony is that he didn't dispute that figure.

Mr. Hallnan: That is not the best point. He said,

"No, I did not know that." And that was dropped at that point.

The Court: Let us go ahead.

Mr. Rosenblum: He didn't deny it, I will put it that way. I have a right to interpret it. He didn't deny it.

The Court: You can say he didn't deny it.

Mr. Rosenblum: I forgot the point I was making. I will come back to it.

And he adds in another thing. He adds in that there was one redemption form he got finally that had the initials of Mr. Miller on, and that that redemption (1419) form disappeared because, as it was brought out, redemption forms are always available to Mr. Miller.

You know, at this very minute in this trial, and it was agreed that the redemption forms were available to Mr. Miller, you will find two redemption forms with J. M. on it, which was put on by Mr. Lucey. You find one by Graef, with the word "Miller" written on top. If his purpose was to take out and withdraw redemption forms that showed any association by him with these cashings, don't you think he would take out the two of Mr. Lucey's with the J. M. on it? Remember, the Government wrote a letter and said, "We find that certain bonds passed through your bank, and we are sending an agent over. Please collect the data for him." Wouldn't anybody expect Mr. Miller, if he was a crook and part of this deal, to say, "Wait a minute, I had better look to see what the documents are"? Look at the redemption forms and find that his name appears on three of them? Couldn't he get another one and put it in its place, or that they can't just disappear? What is there about a redemption form? There were pads all over the place. If he was with Mishel, as Mishel says they were friends, couldn't he get Mishel and say, "Your friend had better go ahead and prepare another one and sign another one"? (1420) You find that these redemption forms are there.

Summation on Behalf of Defendant

And all you have heard about the Thomas Young account. And it is very strange. It has not been explained at any time to my satisfaction. Three of them had the name Thomas Young on them. If Miller was in the deal concerning Thomas Young, as Mr. Hallinan has brought to your attention, don't you think those redemption forms would go out? They were available to him. He was told to check everything. I think one of the agents said they believed he had the redemption forms on his desk. Wouldn't he see to it that he would go so far as to see that the one, with the initial J. W. M. was taken out and another one had to be substituted because he got all eight? Don't you think that those redemptions would be in such shape and such a condition as would not involve him if he was a crook? We are human beings. We have to see how our minds work. Isn't that the normal thing? No. But you find those forms there just as they were. It is still very strange, and you try to figure it out because I can't, because the testimony is that Mishel said, "You need identification." Why isn't it on the first five? Why isn't Thomas Young on the first five? I can't figure it out; see if you can. But certainly with those being in his control they would (1421) have disappeared and they could have had others in, if that was the thing that they did and they knew something was crooked. Would he leave trails on some things within his control?

He gets a letter, weeks, months later an agent comes in. He has all the time in the world, if he knew that he was in with Mishel and he did something crooked—"Wait a minute, let's see our records. What records do we have? Let's look at everything to see whether it is all right." You couldn't get another redemption form? You consider that when you are considering the weight you want to give to this overall picture as to whether or

not Mr. Miller was a partner with Mishel.

The Court: Would this be a good time to interrupt, or do you want to go on for a few minutes? We are going to take a ten-minute recess any time you say.

Mr. Rosenblum: All right, I will take it.

The Court: We will take a brief recess.

Mr. Rosenblum: I am not charged for the time.

(Short recess.)

(Jury not present.)

The Court: All right, get the jury in. We will go to 5 after 1, and that will be the absolute limit, so you schedule yourself accordingly.

(1422) (Jury present.)

Mr. Rosenblum: One thing that has always struck me as rather strange in connection with the Chernoff matter. Everyone knows when you commit a crime you don't want to have too many witnesses. You have the Chernoff bonds. You look at the last redemption form, Mr. Mishel signs it, that was his testimony—is there any reason in the world if he had a deal with Mr. Miller as to why he couldn't sign the bonds, too? He could have signed the bonds. He could have signed the redemption forms. What was the need for it? What was the need for getting a particular signature?

I will tell you what I think the deed was. Because he didn't know whether or not there would be a requirement that someone has to sign his name. So that when he is introduced as Chernoff, is Rosenberg, if Mr. Miller had said, "All right, sign your name on a piece of paper," you would have gotten that signature which was on the redemption form and which was on the bond. Otherwise, is there any need for taking another person in, making another witness?

Also, let me pose this to you: What was the need? In banks, you know, they deal in thousands, hundreds of

thousands of dollars. You have $6600. (1423) You got the president of the bank, according to Mishel, putting them through. And, if you recall, the first two were put through by Miss Graef. And all she said was Mr. Kennedy said to cash them, and she cashed them.

What possible need was there for having eight transactions? Certainly Miss Graef was in charge of that work. Certainly Mr. Miller would know from his past dealings as to what she did if he gave approval. Why put through that $840 worth? Is the amount so large? Is it millions of dollars? People cash bonds, you know, from your experience, in tens and thousands of dollars.

Why make eight separate transactions of it? Why make eight separate records of it? Why make it necessary to take it up with so many different people? If Mr. Miller was a crook and was putting this through, do you think he would say what Mr. Mishel said he said to him, "I got to put it through piece-meal"? Why? Can you think of any reason for them being put through piece-meal? Who is going to fool? Who does he have to deceive? $6684 worth of bonds? He couldn't put it through one slip of paper? Why bring in another man like Rosenberg?

To me, those things are inconceivable because they don't make sense, and if they don't make sense you (1424) have to look around a little and you see if there is another reason for it because Mr. Mishel was putting it through, and I still don't know whether or not—you remember, Mr. Kennedy is now dead—he was handing some of these to Kennedy and told him, "These are some that the boss cashed the other day, get these cashed, too." I don't concede these things couldn't have happened. When it doesn't make sense there is something wrong. And in particular, when you know that he did sign the last one himself, according to his testimony.

I had forgotten to tell you about Mr. Siegel who, you

recall, testified. And I asked him whether or not he told any authority that he had brought money up to Mr. Miller. And at Page 750 in the record the question I put to him was, about delivering the money in envelopes: "Who did you tell it to for the first time?

"I told you, Mr. McAvinue."

Do you recall, Mr. McAvinue was on yesterday, and the question I put to him was, "Did Mr. Mishel ever tell you that he sent money to Mr. Miller through any person? A. No.

(1425) "Q. Specifically, through Sam Siegel? A. No.

"Q. Specifically through Mortie Schnabel? A. No.

"Q. Specifically through Irving Rosenberg? A. No."

And you can be sure that if there was anything in his record the Government would have the duty and the responsibility and have the right to see anything that was said that could conflict with that. And you would see those records. There wasn't a question asked of him. And this is after an investigation of six years. You just consider that when you want to consider what Mr. Siegel is trying to tell you, six times, two or three times theatre tickets. This is in the record.

You remember how Mishel was ready to throw anything at anybody. He said he knew a lawyer by the name of Irving Luria who introduced him at the bank. He said he was having black market dealings with him. That was in 47. We had no OPA since 45. A person can say anything, destroy anybody, whether a professional man, business man, or anyone else, say anything that he thinks is going to fit the purpose. He thought it would make it better if he said the money was in (1426) envelopes which were open. Siegel says they were closed. He said some were open and some were closed

I think I have covered so far every one of the transactions excepting the Chernoff, which I am going to go into, and the stiff accounts. If you remember, and you

may not, on cross-examination I asked Mr. Mishel, "Did you have any dealings with Mr. Littlefield in connection with the opening of some of these accounts that you call stiffs.

"A. Dealing with Littlefield? Not that I remember. I could have, but I don't recall ever having any."

That is the man who when he went to the hospital and he was sick and they discovered a kite, and they discharged him. You heard Mr. Miller tell you the persons who can be in on a kite and not involve the officers, managers, bookkeepers, so on, tellers.

Now, if we look at the stiff accounts, you have Mr. Mishel telling you a story. "We needed stiff accounts because we had to deposit—our deposits ran as high as 150 to $200,000 a month in an account. So I agreed to give Mr. Miller $150 a month for every one of the accounts I used."

Now, that it is a definite positive statement that Mr. Mishel makes. As I said to you before, once in a (1427) while you are fortunate enough that you can find something that can show you in black and white whether the man is lying.

You recall yesterday the Government put in the Young and the Case, and Mr. Hallinan said to Mr. Miller, "Isn't it a fact that the initials, there are no initials as to who opened the account"—although Miller's initials are there if he introduced that account, he gets credit on the—"that there are no initials because you were looking forward to the day when this would happen, and you would be able to say, 'Ah, my initials aren't there, but I opened it'?"

Can you really accept that, swallow that? If a person is looking forward to the day, does he make records of any kind? When you analyze it more carefully, as I did yesterday when I kept on shoving in one paper after another, four of those six stiff accounts, either by signature card or identification of the opening sheet, is Mr. Little-

field's. Mr. Miller identified two of them. You have two with Mr. Littlefield, R. H. L. right on it. Mr. Miller is working a deal, Mr. Miller is supposed to be getting $150 a month. Mr. Littlefield, the man they discovered was running a kite, is the one who opened some of these accounts.

(1428) You heard the testimony. Anyone can bring in a signature card; if it comes through a certain source you get credit for it. You remember, you find at Page 239, Mr. Mishel said in referring to the Sam Marco signature card, the one that has Mr. Littlefield's initials, he said, and I think it shows the practice, "That is one of the cards I sent down." You don't even have to bring it down yourself, you can sent it down, you open an account; you know who was coming there. You heard what the testimony was, that a certain girl opened it, took it off the opening sheet, put down there the one who gets credit, the name of the person who opened the account from the identification of the handwriting and so on.

What is so important about these stiff accounts? You have Williams, Marco, Newman, Young, Case, Feinman. I have told you about the identification of the opening sheets and the two cards which bear Mr. Littlefield's initials. If those four are Littlefield's, why couldn't the other two be Littlefield's? If it was done as was inferred, that the name of Miller was purposely left off, would all these stiff accounts be in exactly the same condition, stiff accounts. He gave a whole list of that. In fact, mentioned some which it appeared were not in (1429) that bank. Ah, "You, Mr. Miller, knew that the day may come when there might be a day of reckoning and that is why you didn't want your initials to be on there." But look at the other four. I say to you that you have the right to infer that the other four were opened by Littlefield if these two also were opened by Mr. Littlefield. If they were opened by someone that didn't know, there

would be nothing wrong there, so far as they didn't know it was a stiff account.

But Mishel tells you he knows it was a stiff account because "I gave him $150 for every account, because I had deposits of $150,000 to $200,000 a month in these accounts, so I paid $150 a month for each account."

All you have to do is to multiply it out, $150,000 a month, the testimony was, twenty-one months active accounts, that is, active accounts total twenty-one months, and the amount that would be deposited would be $3,150,000. He said 150 to $200,000. I multiplied it out for that figure as $200,000 and the amount deposited in those twenty-one accounts would be $4,200,000. But when you take a look at the accounts—you heard Mr. Miller testify, and it wasn't contradicted, you can be certain that the bank records if they contradicted it, they would be here to show that he didn't give a correct figure—(1430) instead of this $3,150,000 or $4,200,000, a total of all, it was $129,848, an average of about $6000 a month. But his telling you that you should believe that he was paid $150 a month because there was a need for it. If there was a need for it why wouldn't they have a writing in black and white so that he can fall back on it?

Doesn't it really look, with the Littlefield and the $5000 bond that I developed yesterday, the stiff accounts, doesn't it look like Mr. Mishel is just transferring what he did to Mr. Littlefield and saying he did it with Mr. Miller?

All right. Now, I think he even tried to palm off on us a Degas—I don't know my art—a Degas which was hanging in the Louvre—he left the impression that that was brought in by Mr. Mishel, that he brought in a picture and gave it to Miller to borrow money. I don't know how far we can just keep on accepting this. But remember his Honor is going to tell you, I am quite certain, that if you are satisfied that he lied as to a material fact you

may disregard all of Mishel's testimony if you wish to or accept that part which you care to accept.

Then we get down to the two loans. I won't take too much time on that. Two $5000 loans. You heard (1431) the testimony, on March 2 and March 9, 1950, the loans in connection with the liquor store. Then you heard that when Mr. Miller said he brought him down and said, "We got information"—I want you to be very careful, because there was one piece of paper introduced which gave certain dates, like January and February, so that it would seem that a memorandum had been prepared by Mr. Miller before or at the time so that we would be put on notice when he was questioned that it may have been in June, several months after. So you have to take that proof which is not disputed, and we gave you the information, the approximate time, and we gave you the source, Dun & Bradstreet.

So I think that it is clear that he came in, he wanted to borrow $5000, and we gave him $5000. There was also a lot brought out about the amount of his balance. You know what happens. When you need money you come in, you are entitled to a loan and they approve it. You don't say, "What is your balance?" If you think the man is entitled to the loan, and your loan is for $5000, you give him the $5000. You don't ask what his balance is. If you need more than $5000 it has to go to the executive committee.

He said he presented a statement so that he (1432) had something upon which to predicate it. It doesn't make any difference whether he had $3.29 or a million dollars. If you want to borrow money and you are entitled to get it, that is why you borrow the money.

But it was brought out that under the rules they are required, in order that they can make money on the money in the bank, that there be kept 20 per cent. And during

the month of March the average balance card, which is in evidence, shows that he had $2000, which would be 20 per cent of the $10,000 that he got on March 2 and March 9. Then it was brought out that at the end of the month or the early part of April he went back to about $2. That is when Mishel went bad and he just took the money. There is nothing to that which was significant. So just don't be impressed by the $2.94 and the $61 or whatever it may be. It was explained, it was explained fully.

However, when the day came and it was discovered and it was learned by the bank that he had borrowed money on the store which he didn't own, and he sent for him, he gave him a story, as Mr. Miller said, well, "It sounded plausible for a while," but, well, he said, "You had a right to tell me what was going on." The story about it takes a month to clear, the way it was developed, it (1433) had already cleared and "We have got that information." Then he said, "If you feel better about it I will give you some exchange securities." He brings down a hypothecation agreement, brings down stock exchange securities which he puts in there.

Now, you heard the testimony that when Mr. Mishel was arrested on October 6, 1950, he went up to see Mr. Miller and said, "What's this about me being arrested?" And that Miller said, "Don't worry about it. You keep your end up and I will keep mine up." October 6. But the undisputed testimony in fact is that in the latter part of May, 1950, four or five months before Mr. Mishel was arrested, at a time when he couldn't conceive at that time that he would be picked up, the testimony as it stands on this record is that the first person, the very first person from whom the authorities learned that Mr. Mishel was a swindler was through Mr. Miller when he sent down Mr. Reedy to the District Attorney's office, to Hogan's office, to advise him. That is the testimony. You try to reconcile it now. And even to the point that on October 6—be-

cause Mr. Miller said that there was no such meeting, it never occurred—that previously, being one of the parties who (1434) were crooked with Mr. Mishel, when he is informed about the loans made on the store that he didn't own, when they are informed that the Alpren securities were either stolen or forged—or whatever they were, I think it was stolen, and when you find the testimony is that immediately upon his receiving such information he sends Mr. Reedy, who knew Mr. McAvinue, McAvinue being in the fraud office at the time, he sends him down there and reports it.

Well, you think about that. Do crooks who are working a deal, a whole series of deals, would one of them, five or six months before the second crook knows that he is going to be picked up, would the first crook say, "Go down and file a complaint, bring it to the attention of the authorities"? And remember that it is on the Alpren securities on the two loans that Mr. Mishel is doing up to twenty years. The sentence is ten to twenty years.

And remember, the testimony is that Mr. Miller testified before the Grand Jury. When his personal attention was needed, he went down. He send Reedy down. He said he works in the bank, he knew Mr. McAvinue. He sent him down. You remember Mr. Hallinan said, "Isn't it a fact that you sent Reedy down because you (1435) didn't want to go down yourself because if you did the whole roof would collapse on you?" You remember that is the question that was put to him. If he didn't want the roof to collapse on him, would he even tell Reedy to go down? If he were a crook and he wanted to be certain that his crookedness and that of Mishel never came to the front, never came to light, would he send anybody down, knowing that he was a party to it? It is just inconceivable to me. And I think the fact that he testified before the Grand Jury against Mishel, testified before the Grand Jury against Rosenberg, that all those

things you have a right to consider. You have had a lot of testimony given about Irving Mickey Rosenberg. Now, you know that the burden of proving a criminal case beyond all reasonable doubt rests on the Government. You have heard the testimony that I saw Schnabel—I brought it out when he took the stand—that I tried to get Siegel to come down, and he wouldn't come down to see me. You heard testimony that Mr. Rosenberg was at my office. I was unsuccessful in getting Siegel down.

I think the proof now shows that Mr. Schnabel was called by the Government. The proof shows that Mr. Siegel was called by the Government. I tried to see (1436) everybody. As the record stands, Mr. Rosenberg is alive and well and available, and he was not called by the Government. Remember, you were told that Mr. Rosenberg was available to me as well as to the Government. That is the fact. But just remember, Rosenberg went to jail because of Mr. Miller; Mr. Miller identified him; Mr. Miller picked him out; Mr. Miller went before the Grand Jury, and he went to jail. Keep all those factors in mind.

Now, I have covered the stiff accounts, and I think we have now covered the hot bonds, the hot money, the $5000 item, the Missouri Pacific, and we are now left with the discussion of Chernoff.

Now, you know, the testimony of Mr. Miller is that a man was brought in represented as Mr. Chernoff, who he later identified by pictures as being Mr. Rosenberg. Remember, there has never been a dispute as to whether another man was in that bank, at least they dispute in a sense that Mr. Sershin said at the very beginning he disputes with Mr. Miller as to whether he said he was at the door or whether he was where he could see him, but Mr. Sershin and Mr. Sweeney—remember when I tried to show Sweeney the distance from the door up to the place where Mr. Miller's desk was?—said that there

(1437) was a man. They say that he said he didn't look at him. Miller says, "I gave him a description." Miller says, "I told him there was a person who was represented to me as Chernoff."

And again I say to you, if there was no need for another person to be there, why did Mishel need someone to sign those bonds?

There is another powerful point that has never been fully denied. When a letter was written by Mr. Miller, if you recall—let me give you the sequence. In August, 1950, notice came in that the Chernoff bonds which went through the bank were stolen and forged. Then the agent came in in August. Then on October 6 Mishel was arrested, in 1950, by Sershin. And you remember that the first time that a claim was made by the bank, Miller claiming and swearing to you from that stand that he told Sershin there was another man there who was represented to him as Chernoff, and at the time he said he gave a description, and he said the agent said that that was not a good description. He gave them the best that he could. But remember that when the first letter came from the Government, the letter of thirteen months later, saying, "We feel that the bank ought to pay for the bonds because they were negligent"—(1438) remember that is the basis; there was no criminal thing at the time. This is just trying to get money, one doesn't want to pay and the other one wants you to pay. And at the time he wrote that, "I was informed by your agent that the bank was in the clear."

Now, either a man has to be a lunatic and not know what he is doing or you find the record we find in this case. You remember it was brought out there were no notes taken by Sershin or Sweeney, they made nothing at the time of their discussion. But here is a letter that goes from the bank, from Miller, to the Government in which he says, "I was informed by your agent that the

bank is in the clear." You remember the testimony Miller gave. He said he asked the agent, and the agent said, "Now that we have the crook the bank is in the clear and we know just how this happened."

And you know as well as I do, you are dealing with agencies, secret service men, as soon as the Government, the fiscal agency, received that letter in which Mr. Miller said, "I was informed by your agent that the bank is in the clear," what would you do? What would I do or any other person occupying the post when a statement like that is made? The first thing you would do is to get in touch with the agent and say, "Did you make that statement?" (1439) And if you had an answer and he said, "I didn't," you would write back and say, "I have conferred with the agents who were in to see you and they deny that such a statement was made."

To this very moment there has never been a letter written denying it flatly. The closest you get is in some subsequent letters when the Government, in one of its letters to the bank, says, "We have no knowledge of your claim with reference to the statement by the agent." That is a quibble. Certainly the thing to do, if this is an important thing, and it certainly must be, is to say, "We talked with our agent and our agent says that isn't so. Don't you be saying something that you want to make a record of." Who would know that he can get away with it if he is trying to make a record? Would he know that someone else wouldn't deny it and put him right on the spot?

There is a reason for these things. You saw the care and the meticulousness with which Mr. Heffelfinger testified—everything is carefully done. The statement is made in the letter, "I was informed by your agent that the bank is not liable," or "We are in the clear."

(1440) "I was informed by your agent that the bank

is not liable" or "We are in the clear." Whatever words were used, it means the same thing.

The best you ever get is several letters later when they say, "We have no information in that regard" or words to that effect. Couldn't they get the information? Don't they deal with their own agents? Isn't it logical that they take a letter they received and turn it over to Sershen and say, "Here, brother, is what this man says."

Isn't that the thing you would expect a Government agency to do? You consider that when you want to consider whether or not Mr. Sershen was in error and maybe he forgot what he said. One thing is clear: You never got a flat denial.

Now, the first count of this indictment whereby, you know, there is supposed to be a false statement made in order to deceive the Government, even though the indictment says that Mr. Miller stated that they lived up to or followed the requirements of the circular letter, that isn't what he said.

In that letter he says—that is the letter of December 26, 1951, upon which the first count is predicated——

(1442) "At the time the investigation was made by your Department we were informed that the bonds were properly cashed in accordance with procedure laid down in your official circular and consequently no claim would be made against us."

How could the Government be deceived in the light of that record? Everything that happened before December 26, 1951, all the facts, had been made known. This is not like somebody writing a letter, "I tell you something so you can do something for me," where the Government doesn't know what happened previously. This is a letter which was written close to 18 months after the agents were first there. How was he deceiving them? About what? The Government said it made this investigation,

it knew and understood what the facts were and they said, "We want you to pay," and Mr. Miller said, "No, we are not liable; we are not negligent. Your agent said we were not negligent. We should not be required to pay."

That is what this first count is about. So whether or not he was trying to deceive the Government, making this false statement, when he said, "We were informed,"—"I was"—let me read this (1442) again. It is very important.

"At the time the investigation was made by your Department we were informed that the bonds were properly cashed in accordance with procedure laid down in your official circular and consequently no claim would be made against us."

Remember, too, that if Mr. Miller was a crook, as he would have to be if he was in cahoots with Mr. Mishel, all he had to do was to do what the Government said in its first letter. You remember the first letter in July of 1950—"Notify your bonding company."

The bonding company puts the money up and pays it over to the Government or gives it to the bank and they pay it, or they pay it first and get reimbursed. If a man is a crook and he doesn't want to be considered any more, to be investigated any more, to bring it to light any more, isn't that the normal thing and particularly when he has a bond and the Government says, "Notify your bonding company. We think you are negligent. We say you are negligent and you say you are not"?

What really happened? It is like a lawsuit, any case in which one party says, "I don't think I (1443) was negligent." The Government says, "We think you are." They say, "We have reviewed your claim and we still think, in view of all the facts, you are."

They are taking the facts Mr. Miller is disputing. Isn't it a logical thing if a man is a crook to say, "All right,

Mr. Bonding Company, I am the president. We were negligent. Pay it."?

That is the end of it. What is he contesting for? What is he contending for? Is it money out of his pocket? Was that the reason? Or was it because, "I want everything to be spread on the record because I am a crook and I want it all developed"?

He has an opportunity, if he is a crook, to clean it up by paying it. Isn't that the logical thing he would do? That is your first count.

Your second count is the one—the other is Government's Exhibit 22 and this is Government's Exhibit 23. Again this issue is going on. The Government says, "We want you to pay."

Miller says, "No, I don't think I should pay. The bank isn't liable."

He says: "Gentlemen: We have your letter (1444) of March 11th requesting reimbursement on account of alleged erroneous redemption of United States Savings Bonds bearing the names of various members of the Nat Chernoff family in the amount of $6684.50. Reply has been delayed because of the overlapping absences of our attorney and the writer.

"We regret that you are insisting on reimbursement because we feel that these bonds were cashed in good faith and within the meaning, letter and spirit of Paragraph 4 of the Treasury Department's Circular covering such redemptions dated December 19, 1947."

Then he goes on:

"When you originally called this matter to our attention we notified our bonding company, but subsequently informed them that the investigation made by your Department indicated that the bonds were properly cashed in accordance with the procedure laid down in your offi-

cial circular as advised in our letter to you dated December 26, 1951."

This is the second time. Then one letter came back: "We have no information with regard to your claim." Never a flat denial. Then it says, now having been told they want the money:

(1445) "We are again filing claim under our Banker's Blanket Bond and will make reimbursement as soon as this matter is processed by the bonding company."

That is April 4. There is a further contest. Do you remember the position that Miller took, which he could have wiped out? He gets hold of his lawyer. Do you remember the memorandum which says, "I tried to do everything"—you will have those memoranda. I am not going to take the time because my time is running out. I only have a few minutes left.

He writes to his lawyer, Levy, and he says:

"I have done everything I could. Here is the file. Make whatever investigatoin you have to make. Do everything you have to. You take it up. There is nothing else I can do. I have tried everything within my power to convince them that there should be no payment made. You most likely will take a different approach as a lawyer. Go ahead and do so."

Then you recall the letter that Mr. Levy wrote, and Mr. Levy was on the stand. You remember that Mr. Hallinan asked Mr. Miller what Mr. Levy did with regard to something he put in this letter. Remember, Mr. Levy was on the stand and he is the one (1446) who could have been asked or should have been asked what steps he took and what sources he used for his information. So the letter from Mr. Levy is to Mr. Bartelt:

"Dear sir: Our client, the Pennsylvania Exchange Bank of New York City, has turned over to us its file regarding the cashing of certain U. S. Savings Bonds bearing the names of various members of the Nat Chernoff family at

the total redemption value of $6684.50. We have read this file very carefully and we have also interviewed Mr. Miller, the president of the bank. We also note from the file that this matter has been reviewed by you. We are wondering whether or not all of the facts in the matter have been presented to you because, from the facts as we learned them, and applying Paragraph 4 of the Treasury Department circular of December 19, 1947 outlining the procedure for cashing E Bonds, we find it difficult to deduct the basis of your claim for reimbursement.

"We have been advised that a person came into the bank with a depositor of the bank, one Irving Mishel. This person signed the bonds in the presence of a teller of the bank and asked the teller (1447) to redeem the bonds."

Mr. Miller told you Mr. Levy prepared this. Mr. Levy was on the stand, and if Mr. Hallinan wanted to know the source, he would have gotten any answer Mr. Levy would have given him. He was on the stand and was questioned about this letter which he sent. Just remember that.

"The teller asked for identification and Mr. Mishel, who was with that person, told the teller that Mr. Miller knew Mishel and that he was identifying the person as the payee named in the bonds. Mr. Mishel and the person with the bonds went over to Mr. Miller and the latter asked Mr. Mishel who the person was; Mr. Mishel introduced that person to Mr. Miller as Mr. Chernoff, the man in whose name the bonds were registered."

You remember the testimony of Miller was that the identifier, Mr. Mishel, went out of his way to add to it. He asked him, "How do you know it?"

He answered, "He works in our restaurant over at Roth's."

Also, this is peculiar. You see these letters. Still the agents said that the name they gave them was Young that they were going to look for (1448) when the history and the record was made that the person who was brought in as the owner was represented as being Mr. Chernoff.

"We want to bring to your attention at this time that in view of the fact that Mr. Mishel had been a depositor of the bank for upwards of four years and that his transactions up to that time had been satisfactory to the bank and that Mr. Miller accepted, and had a right to accept, the identification of the person who claimed he was Mr. Chernoff, that such identification satisfied completely the requirements laid down by the Treasury Department for the cashing of these bonds. It seems to us that no better identification could be made than having somebody who is well known to the Bank Officer identify the person as the one named in the bonds. Such identification, in our opinion, is superior to identification based on automobile registration, license, credit cards and other methods of identification of the same type.

"We therefore respectfully ask you to have the matter reconsidered and if you deem it advisable to investigate further, we would welcome same and cooperate with you to the fullest extent. (1449) Incidentally, Mr. Miller testified before the Grand Jury regarding the theft of these bonds and identified the person who cashed the bonds as the one who claimed he was Mr. Chernoff and who was introduced to Mr. Miller as Mr. Chernoff by Mr. Mishel.

"Anticipating your cooperation and hoping to hear from you as to what further action you deem necessary, we are."

After that there was other correspondence and the Government said, "No, we think you should pay."

So the bonding company paid to the bank, the bank paid to the Government.

This is the third count. What the Government says by its indictment—remember, in the second one, in the second count, they say the representation was made that they lived up to the circular letter. Remember the letter I read to you. You undoubtedly will have it. If you want any exhibits, I am quite positive you will have them.

The letter read: "We believe that we lived up to the spirit and the letter as set forth in paragraph 4 of the circular letter."

(1450) It expresses a belief. They say, "No, that is false."

Keep in mind now—you figure out how that could be false in view of all the history that the Government had in connection with this case. Its investigation had been made. They knew what we contended and what the Government agents contended. So they say the Government was being deceived when he said we believed we lived up to the spirit.

For a moment, treat with that. The cashing of bonds is something that the Government is very anxious to have done. They say: Make available to non-depositors as well as depositors facilities to cash.

If people bought bonds and if you are in another city or you didn't have an account in a bank, what are you supposed to be able to do; not cash them? If you had too much trouble, people wouldn't buy bonds. So you will see a whole series of things as to what you should do. It is very strange, when you look at it carefully it doesn't say what you must do. It says what you should do. Why is that? In the final analysis, there are so many different circumstances which may come into being, that they leave it (1451) to you and you are supposed to use your good judgment as to whether you are to cash or not. For instance, they say in some cases a man can come in by his automobile registration, license, credit cards and other things. The best kind is where you have the identification

of a person by a depositor, and you say to that person, "How do you know him?" And in this case Miller says that is what happened, and there is an issue here.

You remember two or three of the tellers said if an unknown person comes in accompanied by a depositor, it could be a member of the board, they can't cash it. You heard the testimony of Brennan, you heard the testimony of Miller, you heard the testimony of Wilmot, who was the head teller. It is their duty to cash it if they are satisfied that a customer of the bank identifies a person and tells how he knows him. You can't split these things. The real test, in the final analysis, is do you believe you ought to cash it.

Remember he asked a question: "What would you do if a wife came in, Mr. Miller; would you cash it for a wife if you knew the husband?"

He said, "I probably would."

(1452) These things are not cut that sharp because if you did you never would have anybody cashing bonds. The test here is whether or not, really, Mr. Miller was a crook connected with Mr. Mishel, or whether he wasn't, and then it throws light on all these things.

Remember, too, hindsight is so much better than foresight. Now that you see Mishel and learn the things he did, you wonder how could a man deal with a person like that. That is hindsight. Remember he had credit up to $35,000 and the unanimous approval of the executive committee that passed upon the loans.

Also, isn't it very strange, why didn't Mr. Mishel, if he is saying he has deals on all these things, say he had a loan—that on this loan arrangement for $10,000 he gave Mr. Miller something? If he is in on a crooked deal, these bonds are stolen, why didn't he say, "I gave Mr. Miller so many dollars because he accepted these stolen Alpren bonds"? Or is he saying in connection with that he didn't tell Mr. Miller?

You see how it falls out of focus? He (1453) claims he had a deal with Miller and Mr. Gallagher. Isn't it logical he would say, "If I brought the Alpren bonds he would get a cut out of it"?

Not a word about that. You know he would say that in a minute when I questioned him about it. Never once. Why? Why shouldn't that have been part of the deal? At that time back in March of 1950 there was no arrest of Mr. Mishel, there was no trouble brewing, nothing had happened. They had just loaned him money. If they had loaned him money, he should have paid off Mr. Miller, and if he accepted the bonds or if he knew they were stolen, he should have paid him off. Why didn't he say that? Because that didn't happen on any of the other occasions when he said he had a deal and he said he paid off.

I only have about five minutes. I will try to finish up very quickly. It is hard in a case like this to take every phase of it. I have to rely upon your recollection. I hope it is good and sharp because after I finish I can't answer Mr. Hallinan. Remember that. Even if I could think of a reason in answer to something he says, remember I can't because under our system he is entitled to have the last say. (1454) So I sort of look to you to represent me and see if there isn't an answer from all the overall picture to some of the arguments which are made. He can reply to my arguments, but I can't reply to his.

Now, what do we have? You saw Mr. Miller. I put him on the stand. He was available for cross-examination for several days. As to whether he knew Mr. Schnabel or didn't know Mr. Schnabel, I answered that for you.

You heard the answers he gave. You saw how he conducted himself. You saw how he treated the questions which were put. He didn't evade. He made the statements and told you what his answers were to any questions which were put. You saw him, you could evaluate

him. You didn't see him being drawn through a rack and saying, "You lied here; you lied here; you lied here." Just balance that off. Think of it. You have on the one hand a man who is a crook, a confirmed crook, as has been referred to, doing 10 to 20 years and five more. He said he didn't have a deal in connection with his testimony here. He said he did have a deal in connection with his prior convictions when he was sentenced and claimed he had it in writing.

(1455) Now, it is for you to consider what he wants and what he hopes to get He said he has hopes. He wants to be compensated. But remember, he wants to be compensated by tearing down a good, decent citizen, a person who has never been convicted in his life, never been arrested in his life, a married man, has a wife, has a daughter, a man who has worked his way up.

He isn't ashamed of it. He worked his way up and worked nights, as he told you. He did get somewhere. He reached a point which is practically admired by anyone who wants to be in the banking business. He was the president, and he hoped to have his future there for himself, and he has resigned as a result of Mishel and what happened here and now Mr. Mishel wants him to go to jail so he can get out of jail.

I say to you that I don't think that the proof in this case establishes or should satisfy you that they have established his guilt beyond a reasonable doubt as required by law, and I think you can be fair and decent about it and bring in that fair verdict which I hope and pray is the one that I think it should be, and that is that this man is not guilty.

(1456) The Court: We will recess now and resume at 2.15. Don't discuss the case at this phase among yourselves and don't let anybody discuss it with you.

(Recess to 2.15 p. m.)

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(1518)

New York, November 2, 1956;
10.00 o'clock a. m.

Trial resumed.

The Court: Mr. Hallinan, have you got the letters that go with the counts?

Mr. Hallinan: Yes, I have.

The Court: And the Treasury circular letter. I don't know whether I will need it but I thought I would like to have it.

Mr. Hallinan: They go in order, 22, 23 and 24 (handing).

The Court: All right. Call the jury in.

(Jury in box.)

Charge of the Court

The Court: Mr. Foreman, Ladies and Gentlemen of the Jury: Before I start to instruct you on the law I would like to take my opportunity to tell you how much I appreciate the conscientiousness of your service. Both counsel have mentioned it, and they are indeed (1519) sincere. In a case that goes on a little bit beyond the length of the usual case, and particularly a case that has a lot of documents, the tempo of the case slows down, and it is a real test for the jury to see whether or not they continue to pay the same careful attention as they would in a case that was full of blood and thunder. I have watched you, I have watched you read the exhibits, and it has been a pleasure to see. It is the sort of public service most people do not know about, and it is a true public service because it is virtually anonymous. The only thanks you ever get is at the close of the trial and that is mere words. But it is a very deep-felt thanks, because the time you have

taken and the real interest you put into this affair is strictly a matter of public duty.

Now I might say that it is fortunate, too, that the jobs of both of us have been made easier, because we have had able counsel on both sides who spared no effort in the preparation, in their diligence in the presentation of this case to you.

I think the first thing we should know is our respective responsibilities. As to matters of fact, what was said by the witnesses, what the (1520) documents say, who you believe, who you do not believe, and what it all adds up to when you are through, those are matters in which your judgment is supreme and free from any suggestion by counsel or by me. That is entirely your province. You are the sole and exclusive judges of the facts. That is the way it has been put many times. And if counsel or I in the course of any colloquy have suggested a view as to the facts or as to any issue in the case that is the slightest bit different from the view you hold yourself, disregard what we said because, particularly in our colloquy back and forth, we were talking as lawyers, we were talking in our own jargon, we were talking about matters of law and procedure, the mechanics of this case, how it should proceed, and that is what we were thinking about and what we were concentrating on. We were not thinking in terms of facts. We leave that to you.

If during the course of these instructions I touch upon the facts of the case or what a witness said or what I think he said, again I am trying to illustrate some point of law to you. I am not trying to tell you what the facts are or what you (1521) should think the facts are; and if what I say is at variance with what you recall, disregard it because my concentration is on the legal concept, not upon the accuracy of the facts. So long as we understand each other, we will get along all right.

When it comes to questions of law, it is the other way around. There I have the full responsibility. And if I tell

you something is the law and you think I am wrong, why, you disregard what you think yourself and do what I say, because that is my responsibility, not yours; or if you think that the law ought to be changed or it should not be that way, disregard those views because that is not why we are here. The process of law-enforcement is much more scientific than most people think and so is the process of a trial. And if we each do our job and keep within our own little compartment, things will work out the way they are expected to.

Now, in telling you about the law I am going to first give you some general rules of law which apply in all criminal cases. Then I will tell you about the crime which is charged here, the statutory provisions, and what you need to find in (1522) order to bring in a verdict of guilty under the statute. Then I will discuss some rules of evidence with you which may help you in giving weight to the testimony of the witnesses and fitting it into place. So we will start off with these general rules. They are the basic rules under which our procedure works.

At the very outset, the defendant is presumed to be innocent. When a man is charged with crime he is presumed to be innocent and that presumption stays with him, and when you begin to think about this case and when you begin to discuss it you start off with that presumption in mind, because that is the way it works in this country.

The Government has the burden of proving him guilty. That means the Government must produce the proof, the evidence, and the evidence from the witness stand or by the documents which convinces you that he is not innocent, that he is in fact guilty. That is the burden which is on the Government. The Government must carry that burden beyond a reasonable doubt. That means that if after hearing all the testimony you just do not know which way is stronger, whether the evidence on one side is stronger than that on the (1523) other, why, then you have

not been convinced beyond a reasonable doubt. Or if you merely think that the evidence in favor of the Government preponderates, that if you had to pick between one or the other and you would pick the Government, that is not proof beyond a reasonable doubt. Proof beyond a reasonable doubt means proof to a moral conviction on your part. It is beyond any doubt founded upon reason. Now, that does not mean that it has to be beyond any fanciful doubt or any whimsical or capricious doubt, because matters relating to human affairs which we do not see ourselves can never be proven beyon all doubt. But it means beyond any doubt for which you can give a good or substantial reason.

Now, when all of the evidence in the case has been carefully analyzed and studied and weighed by you and it produces in your mind a settled conviction the the defendant is guilty, the kind of conviction you would be willing to act upon in matters of highest importance to yourself, when you are convinced to a moral certainty, why, then you would be convinced beyond a reasonable doubt of the truth of the charge. You would be free from reasonable doubt. Or we can say that absolute or mathematical (1524) certainty is not required because you cannot get that kind of certainty in human affairs but you must have such a conviction that you feel conscientiously bound to act upon it.

With these general rules in mind we come down to the crime or charge. There are three counts in the indictment. There are three separate crimes charged, and they deal with filing statements in a matter within the jurisdiction of the Federal Department which were false, according to the charge, and which were knowingly false and which were material.

Now, here is the statute: "Whoever in any matter within the jurisdiction of any department or agency of the United States knowingly and wilfully makes any false, fictitious or fraudulent statement, is guilty of a crime."

We will break that down a little bit. That means, in order to return a verdict of guilty under such statute, you

must be convinced beyond a reasonable doubt of each of the following elements: That the defendant made a statement, that the statement was false, that the defendant knew it was false and that (1525) he made it wilfully, that is, that he made is purposefully, deliberately, with an intent to deceive somebody, not just carelessly or negligently, and that it was made in connection with a matter within the jurisdiction of a department of the United States and, finally, that it was material. In other words, that it had some significance. If it was a mere insignificant statement that would not be enough. But that it was a material statement, the kind of statement that was likely to affect the determination of the Federal officer concerned. Those are the elements.

Let us look at the indictment, in the light of those various elements. As I told you before, and I will tell you again, an indictment is no proof of a crime. This is simply a charge. This paper asks questions that we are here to decide. It does not prove anything in itself. I am going to start backwards in analyzing the indictment. I am going to start with count 3, then I am going to go to count 2, then I am going to go to count 1. The reason that I do that is that I think it is the easiest way in which to discuss them.

(1526) Count 3 is free from certain little problems of construction concerned with count 2 and count 1, so if we think about count 3 in our discussion at the beginning I think we can make these elements very clear to each other.

Count 3 charges that "On or about June 4, 1952 at the Southern District of New York"—now, Manhattan is in the Southern District of New York; the Southern District has several other counties, but Manhattan is the only one we have to be concerned with here—"James W. Miller, the defendant herein, in a matter within the jurisdiction of a department of the United States, namely, the Fiscal Service of the United States Treasury Department, did

unlawfully, wilfully and knowingly make and cause to be made a false and fraudulent statement as to a material fact, to the effect that one Irving Mishel introduced a person to the defendant James W. Miller as Mr. Chernoff, whereas in truth and in fact as the defendant then and there well knew he did not introduce any person to the defendant as Mr. Chernoff." In other words, the count says that in that letter the defendant said that Mishel introduced Chernoff to him and in fact he knew that was false, that Mishel (1527) never introduced Chernoff to him.

The letter in question is Exhibit 24, and it has been read to you several times. Paragraph 2 is what I will read.

"We have been advised that a person came into the bank with a depositor of the bank, one Irving Mishel. This person signed the bonds in the presence of a teller of the bank and asked the teller to redeem the bonds. The teller asked for identification and Mr. Mishel, who was with that person, told the teller that Mr. Miller knew Mishel and that he was identifying the person as the payee named in the bonds. Mr. Mishel and the person with the bonds went over to Mr. Miller and the latter asked Mr. Mishel who the person was; Mr. Mishel introduced that person to Mr. Miller as Mr. Chernoff, the man in whose name the bonds were registered."

Now the fact that Mr. Miller did not sign the letter or actually mail it is of no significance if you are convinced beyond a reasonable doubt that it was done at his direction, because the statute provides that not only whoever commits the offense but any person who aids, abets, counsels, commands, (1528) induces or procures its commission is a principal, or whoever causes an act to be done which if directly performed by him would be an offense against the United States, is also a principal. In other words, if a person intending to commit a crime gets an innocent person to perform one of the steps necessary to complete that crime, it is the person who intended to com-

mit the crime and who directed the performance of that step who is the principal who committed the crime.

So if you are convinced beyond a reasonable doubt that Mr. Miller caused this letter to be sent, knowing its contents, then I tell you it is of no significance whether he signed it and mailed it himself or had someone like Mr. Dorff do it for him.

We now come back to the main track as to the elements involved. The testimony is that this was formulated and mailed in this county, as I recall it, and if you are convinced of that beyond a reasonable doubt that brings it as an act committed within the Southern District of New York.

Now as to whether it is a matter within the jurisdiction of a department of the United States, (1529) I will tell you as a matter or law that the Fiscal Service of the Treasury Department of the United States is a department of the United States, and I will tell you that as a matter of law an application for relief from liability for an improperly cashed Treasury bond is a matter within the jurisdiction of that department. So if you are convinced beyond a reasonable doubt that this letter was formulated and sent in the course of such a matter, why, then that would satisfy that element of the crime.

We come to the next question: Are you convinced beyond a reasonable doubt that the defendant made the statement? That gets to the question of whether you are convinced beyond a reasonable doubt that he knew what was in the letter and directed Mr. Dorff to send it.

The next question is, are you convinced beyond a reasonable doubt that the statement in the letter was false, the statement that Mishel introduced a person to the defendant as Chernoff?

Now, that gets us into one of the heart questions, whether in fact Mishel introduced a person to the defendant at the time these bonds were cashed as Chernoff or whether he did not. The defendant (1530) claims that he did, and

he has testified that he did. The prosecution claims that he did not, and in that course they have submitted Mishel as a witness and they have produced the tellers who claim to have seen who was at Mr. Miller's desk at that time. You have heard their testimony in that regard. The Government's contention is that no one was introduced as the payee of these bonds, that Mishel came in to collect them and that Rosenberg was brought in only as a person to resign the bonds and that the defendant knew Rosenberg as an associate or employee of Mishel; whereas the defendant says that he understood the payee was employed by this Roth's Grill.

I am not going to try to go through all the testimony which you have heard summed up by two able lawyers, and I do not mean to say one thing is more important than another, but that sketches the issue as I see it.

The next question: If this letter was false did the defendant know it was false? Are you convinced beyond a reasonable doubt that at the time he had this letter mailed he knew it was false? (1531) Well, the defendant says it was not false, therefore, of course, he could not have known it was false. The Government says it was false and he knew it was false because, in fact, it was part of a plan and scheme that he had for concealing everything he did with respect to the Chernoff bonds. And in that regard they had Sershen testify as to statements which he says the defendant first made as to lack of recollection and then as to the person standing in front of the bank which they say conflicts with his testimony as he gave it here; the ineffective investigation that Wilmot made when the mattter was brought to the bank's attention and the avoidance of initials on these redemption slips, contrary to what the Government claims was the practice at the bank of requiring initials on them. And, indeed, the Government claims that the one redemption slip which the

defendant knew his initials were on and the only one he knew his initials were on was surreptitiously replaced by the one which had no such initials on it. They say all of that shows a plan and scheme to conceal the defendant's participation in this Chernoff bond transaction and, therefore, this letter was no mere accident or no mere act of negligence, it was a (1532) deliberate and intentional false statement.

Now we come to the next question: whether it was submitted wilfully and unlawfully. In other words, when the defendant sent this, are you convinced beyond a reasonable doubt that he intended to deceive the Government and that he was purposeful and deliberate about that. The Government says, from the very nature of the statement, they contend, that is obvious, that it goes to the question of whether these bonds were legally cashed, cashed in conformance with the Government regulations or in the circular letter or not. The defendant says, "Well, I tell you that the statement is not false, therefore the purpose for which I sent it is immaterial."

The next and last question with respect to this letter is whether the statement is material or whether it is an insignificant statement. The Government contends, as I say, it went to the heart of the regularity of the transaction, that whether this man was introduced as the defendant says he was makes a substantial difference as to the degree of compliance with the Treasury Department circular letter or the non-compliance with it. The defendant (1533) again reiterates that the statement is true and, therefore, whether it is material or not is not really a question before us.

I think that covers the third count and the letter of June.

Now I will work back to the second count of the indictment. It reads: "The grand jury further charges that on or about April 4, 1952 at the Southern District of New

York James W. Miller, the defendant herein, in a matter within the jurisdiction of a department of the United States, namely the Fiscal Service of the United States Treasury Department, did unlawfully, willfully and knowingly make a false and fraudulent statement as to a material fact to the effect that a quantity of bonds in the names of members of the Nat Chernoff family were properly cashed in accordance with the procedures laid down by circular letter of the United States Treasury Department, whereas in truth and in fact as the defendant then and there well knew the said bonds were not properly cashed in accordance with the procedures laid down by the said circular letter."

(1534) First let me read the letter of the defendant which is said to be the basis for this charge. I will read, again, just the second paragraph of that letter:

"We regret that you are insisting on reimbursement because we feel that these bonds were cashed in good faith and within the meaning, letter and spirit of Paragraph 4 of the Treasury Department's circular covering such redemptions dated December 19, 1947."

I think that is all we need read from that.

Now pararaph 4 of the circular letter of the Treasury Department, Exhibit 21, reads:

"Personal identification, that is, identification of a stranger by a customer of or by someone well and favorably known to the paying agent, if carefully used, is one of the best methods of identification and has the approval of the Treasury. But, of course, personal identification is not considered good identification by the Treasury Department when a paying agent accepts the bare statement of the identifier that he knows the person presenting the bond for payment by the name inscribed on the bond. The personal integrity and reliability of the identifier (1535) are not sufficient. The reliability of the source and duration of the identifier's acquaintance with

the person presenting the bond for payment are just as important. The paying agent, therefore, should ask for the source and duration of the identifier's acquaintance with the person presenting the bond and should be satisfied that they are sound. At the time of payment a paying agent should require the identifier to sign his name and show his address on the bonds, or on a separate record, or should so record such data itself. A paying agent may imprint on the back of a bond for the signature of the identifier any form of guarantee which the agent may wish to use for its own protection. In the event of a loss the identifier will be expected to be in a position to present a reasonable basis for making the identification. In the absence of such reasonable basis the paying agent will be considered to have been at fault in making the payment. Consequently, the agent will have to sustain the loss unless he can obtain reimbursement from the identifier." That is the paragraph referred to in the letter of April 4th.

(1536) Now we have the same questions as to this letter that we had as to the other. First, was the letter formulated and mailed in the Southern District of New York? Second, is it a matter within the jurisdiction of a Federal department? And what I said on that as to the June letter equally applies here. Then we have the further question, is this a statement of fact? Now it says "we feel that these bonds were cashed in good faith within the meaning, letter and spirit of Paragraph 4." The defendant contends that that is not a statement of fact, that is a mere expression of opinion. The Government says that is a statment of fact; what he is saying and what he intended to say is, "These bonds were cashed in accordance with that paragraph of the circular letter." That is a question which you must decide. What is the true, natural purport of this language?

What did the defendant intend to be the meaning of this language when he wrote it? If you are convinced beyond a reasonable doubt that he intended it to be taken as a statement of fact that this circular was complied with and that that is the normal purport of these words, why, then you (1537) may treat it as a statement of fact.

This question of what is a statement of opinion and what is a statement of fact is the sort of thing that I guess metaphysicians could talk about for hours. But I will just give you a few simple illustrations that may help you. If I say I had breakfast at 8 o'clock this morning, that is a statement of fact. If I say, "I believe Joe Smith is going to win the election," that is a statement of opinion. You would be justified in relying on my statement, if it was important, that I had breakfast at 8 o'clock because I said that is what happened. But no one would be justified, at least in the eyes of the law that would not be held actionable in a civil case, certainly not a criminal case, if I express an opinion as to who is going to win the election, even though I falsely stated my opinion when in my heart I thought Joe Jones was going to win but said, "I think Joe Smith is going to win," because it telegraphs itself to you as a statement of opinion, not a statement of fact, and you are put on notice that I am not saying what the facts are.

(1538) We could take another case. Supposing I said to you that I believe that the English and the French are right in the way they are handling the Suez situation. That might be false. I might think they are dead wrong, I might know that there are scalawags underneath handling the whole thing. But, again, that would not be the sort of statement that would be actionable, probably not civilly and certainly not criminally, because it telegraphs itself to you as something which I really can't speak of as a matter of fact; I am obviously giving you my views and opinion with respect to it. But if I say to you, "I

believe I had breakfast at 8 o'clock," I am really saying it is my best recollection that I had breakfast at 8 o'clock. And therefore I would say that is a statement of fact, even though I start off with the magic words "I believe."

And so the question before you is whether this is really a statement of fact, started off with the words "I believe" in a loose and ambiguous sense, or whether it was merely intended as a statement of opinion. Unless you are convinced beyond a reasonable doubt that it was a statement of fact, why, you must vote not guilty on that count. If you are convinced (1539) beyond a reasonable doubt that it was meant as a statement of fact and that was the natural purport of those words, why, then you may go ahead and consider whether those other elements of the charge have been met. Then we come to the same elements that we had with respect to count 3. Was the statement false? And that, as I read the circular letter and I read the letter of the defendant, again turns on whether Mishel introduced anybody as Chernoff, and the further question as to whether Mishel was an identifier of integrity. The Government claims that the defendant knew Mishel, knew all about him, the kind of person he was and the illegitimate enterprises he was in and that, therefore, he was not a person of integrity who could identify anybody anyhow. The defendant contends that he did not know any of these acts of Mishel until after it was all developed later.

So you have on the question of whether the statement is false the same questions that we discussed with respect to count 3 and the additional question of whether the defendant was on notice as to whether Mishel was a person of no integrity. Then you have the same question of whether the defendant (1540) knew it was false and the same question of whether when he mailed it he did it deliberately and wilfully with an intent to deceive the Government and get free of this liability or to get this

liability compromised in some way. And, finally, whether the statement is one of materiality, whether it is the kind of statement that it has enough significance that it might sway the decision of the Federal officer responsible for making this decision. That is count 2.

We come back at last to count 1. And that charges:

> "That on or about December 26, 1951 at the Southern District of New York James W. Miller, the defendant herein, in a matter within the jurisdiction of a department of the United States, namely, the Fiscal Service of the United States Treasury Department, did unlawfully, wilfully and knowingly make a false and fraudulent statement as to a material fact to the effect that a quantity of bonds in the names of members of the Nat Chernoff family were properly cashed in accordance with procedures laid down by circular letter of the United (1541) States Treasury Department, whereas in truth and in fact as the defendant then and there well knew the said bonds were not properly cashed in accordance with the procedures laid down by the said circular letter."

On all of the elements, except the one I am about to discuss, you have the same questions with respect to count 1 that you have with respect to count 2, I mean as far as falsity, knowledge of falsity, wilfulness and materiality are concerned. I will now read the letter which is said to support count 1, and again I will only read the second paragraph of it:

> "At the time the investigation was made by your Department we were informed that the bonds were properly cashed in accordance with procedure laid down in your official circular and consequently no claim would be made against us."

And then it goes on to say that certain items in a previous letter of the Treasury Department were wrong. The additional question here which we must discuss exclusively with respect to this count is the language, (1542) "We were informed that the bonds were properly cashed * * *." The indictment charges, not that he said he was so informed, the indictment charges that the defendant stated that a quantity of bonds in the names of members of the Nat Chernoff family were properly cashed in accordance with procedures laid down by the circular letter of the United States Treasury Department. It is the theory of the Government that when he said "We were informed that the bonds were properly cashed" he was saying by implication and by intended implication "These bonds were properly cashed in accordance with our information," or "Our information and honest belief is that these bonds were properly cashed."

Your first question is, is that the true purport of these words? And is that the purport, the meaning of these words which the defendant intended? And if you are convinced beyond a reasonable doubt that it is, and only if you are so convinced when we get to the following steps, if you are convinced beyond a reasonable doubt that it is, you then come to the question of whether, one, he knew the facts were false, he knew the bonds were not cashed in accordance with Treasury Department pro- (1543) cedures; and, second, whether his information or the information he claimed to rely on was either absent or not a reliable basis for his statement.

In other words, if I tell you, "On information and belief Mr. Hallinan had breakfast at 8 o'clock in the morning," there are two questions. One, did I know very well that Mr. Hallinan did not have breakfast at 8 o'clock this morning? And, two, did I have a reasonable basis for relying upon the information to the effect that he did have, or did I have any information to the effect that he

did have breakfast at 8 o'clock this morning?

The defendant says, "All I put in that letter was to tell them what Sershen told me, that the bonds were cashed in accordance with the proper procedures and the bank was in the clear."

The Government says, in the first place, Sershen never told him that, so he had no reasonable basis for making any such statement in the letter, and, in the second place, he himself knew that that was not true, and what he intended to do by this letter, by using this form of words, was to get over to the Treasury Department that these bonds were cashed in accordance with the proper Treasury (1544) Department procedures when in fact he knew they were not.

So here you have the question of whether that is what the natural meaning of this language is, whether that is the way the defendant intended it to be taken, and whether it was false, whether he knew it was false, whether he had no basis for saying he had information to the contrary, whether he sent the letter in wilfully and deliberately as part of a scheme to deceive the Government, and whether it was material, whether it was the sort of statement that would affect a decision of the Federal officer involved.

Those are the issues in the case, as I see it, the principal issues in the case. I want to tell you again: I have tried to concentrate on the elements of the crime charged. I have referred to facts and testimony very briefly. I have been thinking entirely about the legal concept, trying to explain it to you. And if I have said something with respect to the testimony which is not in accord with your recollection, disregard it, it was accidental and unintended and I may have been innocently wrong. And, further, if I have given any emphasis to one fact as against another, I have not (1545) done it in an attempt to try to tell you what is important and what is not. I have picked out

the facts that came to my mind that would best demonstrate these legal concepts that I have been trying to explain.

The next question I think I have to discuss. In this case, as very often happens in the trial of a criminal case, there were references to acts which may be illegal other than the acts charged in the indictment. Again, the ones that I remember primarily are those in the cross-examination of Mishel. He was asked about various other transactions with Mr. Miller. He told about a $5000 bond which he said he cashed, after telephoning to Mr. Miller, through a messenger whom he sent to Mr. Littlefield. And in connection with the Mishel Liquor Company loan he said that he gave the defendant as collateral, when that loan went bad, certain Missouri Pacific bonds or stock which were stolen and which he said the defendant knew were stolen. And there was reference to burned money and things like that.

I mention this not to impress its importance but to subordinate it to the principal issues of this case. Mr. Miller is not on trial for any of those (1546) acts. And regardless of what you conclude as to any of those acts the only question which will be submitted to you is whether you are convinced beyond a reasonable doubt he committed the acts charged in the indictment. The reason you get off into these other acts, and I am not saying whether they are illegal or not illegal, and I am not even going to pass on it, is because in going into the credibility of a witness you are entitled to go almost into his whole life, and anything he has ever done that is wrong you can ask him about it so that you can show them to the jury against the background of the man that he is. The reason that I think Mr. Rosenblum went into these questions was to show the kind of transactions that Mishel had been in and to show what he sought, which he con-

tends, is a tendency or a deliberate plan of Mishel to draw the defendant into every mess that he was in himself. The Government also can go into these acts or argue from these acts which were developed, regardless of which side developed them; they can both take advantage of them after they are in or it can go into other acts of a similar nature to show that what the defendant did was not an accident or a slip (1547) or a mere negligent act, but to show that it was the deliberate part of a plan, a plan either to conceal the Chernoff bond transaction or even part of a larger plan with Mishel, if you believe what Mishel testified to with respect to these other transactions.

Now actually the probative value of these events is down the ladder compared with the testimony—this is only my view; you may use your own judgment in this regard—compared with the testimony that goes to the issues framed by the indictment itself. That is what we are here for. We are not here to decide what happened with respect to these other transactions except as they may shed some light upon the transaction charged in the indictment. As a matter of fact, many of the discussions at the bench were as to how far we would go and how far we would not go with respect to these other matters, and if we brought them out fully, and both counsel had their own views as to what kind of proof they would put in and what kind of proof should not be put in, we would be here until Christmas trying out these other things which are not charged in the indictment. So I simply say this is to try to put that testimony down into the level (1548) in which it is properly before you.

I can give you a very easy illustration unrelated to this case. If I were on trial for smuggling liquor into this country: I get down here to the Battery and I have a case of whiskey and I am trying to run with it and a

policeman comes along to arrest me and I hit him over the head with a blackjack and knock him down and I keep on runing. I am only charged with smuggling the liquor into the country; I am not charged the assault upon that policeman. It is perfectly proper for the Government to prove against me that I assaulted that police officer because that shows that I knew I was doing something wrong when I was fleeing and that I was trying to get away from the police officer, but if the jury concluded that I hit the police officer but I never brought whiskey into the country, they would have to return a verdict of not guilty because I was not on trial for the assault, I was on trial for bringing the whiskey into the country.

In other words, if for any reason, and I am not suggesting one way or the other, you believe that the defendant did commit some act other than that charged in the indictment and you for some reason (1549) thought it was illegal, you thought that he was not guilty of any of the acts charged in the indictment but that he was guilty of that act, this other act not charged, your verdict would be not guilty. In other words, you do not convict a person of one crime because you happen to think he committed some other crime.

There are a few other general rules of evidence that I ought to cover with you. Of course you know, and I have already told you but I will tell you again, you must reach your verdict solely upon the evidence, the legal evidence of the case, the evidence that you hear from the mouths of witnesses or that you read in the exhibits, not upon facts that are incorporated in the questions of either counsel, or not upon any facts that I may state or that they may state in argument or colloquy back and forth. It is your recollection of the witness's testimony and the exhibits that controls. And neither are you, of course, to think that any ruling on any objection or anything

that I have done in the course of the case dealing with procedure or law indicates any view whatever as to the guilt or innocence of the defendant. It does not. The rulings that I have (1550) made in connection with sustaining objections, overruling objections, what we will go into and what we won't, are matters dealing properly with the mechanics of the trial, how to get evidence in to you in the simplest fashion and not based at all upon what I think is the truth with respect to the charge.

There is one more thing I have to charge and that is circumstantial evidence. Where you have a question of what a person knows or intends, usually you have to come back to circumstantial evidence because you can't look into a person's head, since you do not know what he actually has in there. You can get some help of what he says he intends by what he says he knows. But sometimes you do not want to rely exclusively on that. You look at all the circumstances, how he acts and the circumstances around how he acts to decide what you think he really knows or does not know. You have that every day in your own common affairs. You have to decide whether somebody really knows something or whether they do not. You do not always take their word one way or the other. What they say helps sometimes. Also, you look as to what they have done. Did they act and do things as though they knew something or did (1551) not know something? That is called circumstantial evidence.

I can perhaps give you an easier illustration that does not have anything to do with this case. Supposing all these windows were shut and our question was, "Is it hot or cold today?" "What is the temperature outside?" There are three ways in which we could find out. You and I could all go down on the front steps of the court house together and stand there for five minutes, and then we would know of our own knowledge whether it

was hot or cold outside. Or we could send Mr. Rosenblum down and ask him to stand on the steps of the court house for five minutes and then we could bring him up, put him on the stand, swear him, and then we could ask him whether it was hot or cold outside? He would know of his own knowledge and he would tell us under oath what he knew of his own knowledge. That is called direct testimony—being able to tell you what they themselves know or think they know.

We come to the third problem. Supposing we did not have time for Mr. Rosenblum to go downstairs and we said, "Mr. Rosenblum, will you stand over at that window for five minutes and look outside and (1552) see what is going on?" Then we put him back here on the witness stand and swear him and we say, "What were the people wearing?"

He says, "They all had overcoats and hats on."

"How were they wearing them?"

"They had their overcoat collars all turned up."

"Was there water in the street?"

"No, there was ice in the street."

"Was it melting?"

"No, it was not melting." And so forth.

We develop all the questions we can think of that would show whether it was hot or whether it was cold. Now each of those little elements is a circumstance, that is circumstantial evidence. If when we are all through it all moulds together and shows that is must have been very cold outside, then you would be justified in drawing that conclusion. Whether you have direct testimony or whether you have circumstantial evidence you have always got the question of whether you are convinced beyond a reasonable doubt of something. In either case, whenever a witness takes the stand your first question is: Am I convinced beyond a (1553) reasonable doubt that

he is telling the truth? Because if you are not, why, then it does not make much difference what he says. Then where you have circumstantial evidence you have the additional step: Am I convinced beyond a reasonable doubt he is telling the truth? And, then, am I convinced beyond a reasonable doubt from the facts which he tells me that some other fact is true? Am I convinced beyond a reasonable doubt from the fact that everybody had an overcoat and hat on, had the overcoat collar up, the fact that there was ice in the street, am I convinced beyond a reasonable doubt that it is cold outside? Because that is the question in the case.

Suppose Mr. Rosenblum said, "I looked out there for five minutes and I couldn't see a soul." And we say, "Was there water in the street?"

"The streets were bone dry," or "I can't tell whether it was water or whether it was ice." We could get a situation where all of the circumstances he related did not prove a thing. They could mean one thing and they could mean the other. Then your circumstantial evidence does not prove the ultimate fact, the question of whether it is hot or (1554) cold.

So I think we could say that no greater degree of certainty is required with respect to circumstantial evidence than direct. In either case you have to be convinced beyond a reasonable doubt as to the import, the impact of the testimony.

If all of the circumstances related are consistent only with guilt or only with the guilty knowledge which is in question, or with the guilty intent, why, then, you would be justified in saying, "I am convinced beyond a reasonable doubt from those circumstances that so and so is guilty, or that so and so possessed this knowledge or intent." If, on the other hand, there is a hypothesis which is equally consistent with innocence, in other words, the circumstances go both ways, or all of the circumstances do

not point toward guilt, if there is an innocent explanation for those circumstances, then of course you are not convinced beyond a reasonable doubt that so and so is guilty or that so and so had this guilty knowledge or intent. So that is the rule in general as to circumstantial evidence.

Here we have got to get back in focus for a few minutes. I am not attempting to give all the (1555) testimony because I cannot relate all the circumstances without getting off into another summation. You had the tellers who saw certain things, the documents which show certain things. The Government argues that there is only one explanation for these things and that is that the defendant had a certain guilty knowledge, that he knew all about the Chernoff transaction and that he knew that the money was not being paid to the true Chernoff and that, therefore, all of these letters which he wrote to the Government were knowingly false. And the defendant has argued that those facts, in the first place, he says, some of them are not true, the testimony is wrong in certain respects, and as to those parts which are true he says they do not add up to that proof, there is an innocent explanation for all of those things. That is the general analysis of this kind of circumstantial evidence.

We are down now to about the last thing I am going to talk to you about and that is the credibility of witnesses. As I have already told you, you are the sole and exclusive judges on that. Who is to be believed, how much of his testimony is to be believed is all up to you. And all I am going to do (1556) now, and you do not have to follow my checklist at all, I am going to run over fairly briefly things which the courts over the years have thought may help you or have some significance in this regard. But as I said at the beginning, it is your judgment as to what is important, your own thinking about a person. Nobody can tell you exactly how to tell whether a person is telling

the truth or not. So I suggest things that you may want to take into account. In the first place, did the story as he told it make sense? Does there seem to be a rational basis for it, or is it an unrealistic story that requires that you had better sift this a little more? Was it realistic? What kind of a person was he? Was he smart or was he dumb? Is he likely to have a good recollection or a bad recollection? Was he in a position to observe or was he in a poor position to observe? Is it the sort of thing he would be likely to remember? Or is it the sort of thing that would only have a passing interest to him? What was his demeanor on the stand? Did he look frank and forthright as he testified to you? Or did he look like he was withholding from you, trying to hold back or holding back from you? Was he smart? Was he shifty? (1557) How would you deal with him if you ran across him in your business in everyday affairs? How would you appraise him if he told you something relating to yourself?

You may also take into account the fact that a person has or has not been convicted of a crime. A person who has been convicted of crime, that means that at some time he had a sufficient disregard of the law that he did something which was so flagrant that he was caught and punished for it. That is another thing you take into account. If he did it once is he the sort of fellow that will do it again? Has he learned his lesson, or is this sort of habit-forming and does it mark him as a person who will do that?

The same thing with respect to prior illegal acts which he was never convicted for. Sometimes we do things that we do not get caught at, some serious, some not so serious. If the witness tells you, "I committed certain acts, I committed forgery, larceny," things like that which have an element of dishonesty in them that not only broke the law but they were dishonest things—"I gave false testimony under oath"—any of these things that show that at least

at one time he has been willing to do something dis- (1558) honest. And you have to decide, has he learned his lesson? Has he quit? Is he telling the truth here? Or is it the sort of thing that permeates the man and therefore you won't believe him here?

Also, you may take into account prior inconsistent statements. If a man says one thing today and said something else a few years ago or last month or last week, why, that again is something you may take into account. None of these things are conclusive in themselves but they are all little things that you add up and look at when you analyze a witness. And if there were any inconsistent statements is there a satisfactory explanation for them? Very often, you or I, you are asked about something today and asked about five years ago and describe different things with complete innocence. It depends upon the statement and the circumstances. If some of the witnesses here have shown inconsistent statements you take into account whether it is the sort of inconsistency that marks a liar or whether it is the sort of inconsistency that is understandable, or whether it is the sort of inconsistency that marks a liar who may be nevertheless telling the truth today. Because what we are interested in here is the truth. That (1559) is all we want. It is not a question of who we like, who we do not like. What we want is the truth. But we want to be sure that we are acting on the basis of the truth.

Another thing you take into account is the interest a witness may have in the outcome of the trial. We know that if a person has an interest that sometimes subconsciously and sometimes deliberately he will lie or distort the facts to further his interest. So one of the things you always look for is, has the witness got an interest in the outcome of this trial or in the impact of his testimony which might get him to say something that was not true?

I do not mean to exclude all the other witnesses, but

there are two that got the principal attention here as far as this point is concerned. One was Mishel and the other was the defendant himself. Mishel said that he has been convicted in the State Court, that he is under a heavy sentence and that he hopes that he will get some consideration as a result of his now telling what he contends is the truth. Now you have two questions. First, would that induce him to tell something that is not the truth? And, second, did he do it?

(1560) And then you have the question of the defendant. Nobody has a greater interest in the outcome of this trial than the defendant himself. So he has an interest which might induce him to distort the truth. But if you say, "I won't believe anybody who has an interest in the trial," what you are in effect doing is, one, depriving the defendant of his right to testify, which the law says he shall have, it says he has a right to testify; and, then, you will decide whether his interest so dominated his testimony that you believe it or not. And similarly you would be depriving the Government of the ability to use witnesses which it must from time to time use because, after all, no party on either side can pick its witnesses. The witnesses depend upon who was present when certain things happened, and you have to take what you get.

So although it is perfectly within your province, you can do what you please, you may say, "I won't ever believe an interested witness," I suggest to you that the interest a witness has in the outcome of a case, if he has one, is simply an additional factor which cautions you to look at his testimony very carefully in the light of that (1561) interest but not necessarily to disregard it. But that is entirely a matter for you.

Where you have a witness who has an interest or where you have a man who is an accomplice, for instance I will say Mishel on the basis of his testimony is an accomplice here, you have to look at him as though he were part of

this same crime. In other words, he has his own problems with respect to this case and his own interest. And the defendant contends, further, he not only is an accomplice but he is motivated against the defendant because the defendant testified against him on one occasion.

So where you have a person subject to that kind of stress, that kind of temptation or profit which might lead him to exaggerate, to withhold or to deliberately lie, then you look to see to what extent is he corroborated by witnesses who have no such motive. And the Government has produced a whole series of witnesses here who they claim corroborates Mishel and is all inconsistent with the defendant. The defendant makes a different contention. He says that it does not work that way at all, that the picture is in his favor. But those are the things that (1562) you may wish to look for.

Now if you conclude that a witness on the stand deliberately lied to you as to a material fact, why, you can disregard his testimony altogether if you want or you can try to sift out that part where you think he lied and follow that part which he did not. All of this comes down to saying it is up to you, use your own judgment. But these are things which you may consider.

If a witness is equally available to both sides there is no inference to be drawn from either side failing to call him. If he is only available to one side and that side fails to call him, you may draw an inference that he would testify adversely. There was some talk about Rosenberg. My recollection of the testimony, and I may be wrong, there was no proof one way or the other and therefore I do not think there is any basis one way or the other for drawing any inference regarding his failure to testify here. It is a matter I will leave to you. I have told you what the law is on the subject.

Now we come to things which I am sure you know. A jury can act only by unanimous verdict, that you must

render a separate verdict as to each count (1563) of the indictment, and in that regard I will tell you that you are not to take into account punishment, sympathy, prejudice or any of those things. The trial of a lawsuit can be carried out exactly as the law intends it and that means that you simply do your job. You have no broad scale responsibility beyond one of the most important responsibilities of citizenship and that is to report on the facts of this particular case. Punishment is my problem, if that arises, and it is not a matter which in any way concerns you. What I do or do not do is no problem of yours. That is something that is altogether foreign from this part of the trial. And the same with sympathy and prejudice.

There are going to be twelve of you in the juryroom, and it is your duty to try to render a unanimous verdict if you can. It must be a verdict which each one of you feels sincerely, honestly, himself. But that does not mean that there should be any dogmatic approach to the problem. It does not mean that whatever view you have when you first go into the juryroom is the one you must follow all the way through. On the contrary, just as each one of you has paid most careful attention to every bit (1564) of testimony in this case and to every exhibit, so have your eleven fellow jurors. They have been just as conscientious as you have. You owe a duty to each other to state the views you have, your reasons for them, and to listen with courtesy and a willingness to be convinced, with an open mind, as to the views of your fellow jurors.

You have done a superb job through this trial and I am sure that the balance of your deliberations will be conducted on the same high plane.

I will ask if there are any exceptions.

I am going to ask you ladies and gentlemen to wait here just for a few minutes. Don't discuss the case at all. At this point I always find out how many points of

law there were that I should have covered that I did not and if there is anything I have to do to supplement my instructions I will give them to you.

We will go in the robing room.

(The following proceedings took place in the robing room.)

Mr. Perry: What would your Honor suggest as to our procedure? Should we go through our requests to charge?

(1565) The Court: Any of your requests to charge which I have not charged you can consider denied. I tried to cover them in substance as I thought they merited coverage. If there is any particular one you want to call my attention to that you think was just an oversight, go ahead. I went through all your requests last night.

Mr. Perry: I have made notes, your Honor, as you charged. I may have missed some things. The first request to charge, your Honor, we asked for some charging as to the effect of the indictment so that there would be no confusion.

The Court: I think I have covered it.

Mr. Perry: Also, your Honor did touch upon the presumption of innocence. We would ask your Honor to enlarge——

The Court: I think I have covered that. I have charged this so many times that I think I will keep to my own language on that rather than as you suggest.

Mr. Perry: We had requested that the jury be charged that the presumption of innocence is to remain with the defendant until such time as they actually and finally reach a verdict. That might be ten hours (1566) of deliberation.

The Court: I think they have it as it is.

Mr. Perry: Your Honor, we have requested specifically charges 18 and 19 concerning Sam Siegel and Norty

Schnabel. You mentioned of course Mr. Mishel and the defendant but you eliminated any reference to those. Siegel you may remember, your Honor did cover generally perhaps in saying that some people had prior convictions.

The Court: Did Schnabel have one too?

Mr. Hallinan: No.

Mr. Rosenblum: Schnabel has no prior record, as I remember from the testimony.

Mr. Hallinan: He has no prior record.

The Court: I think, as a matter of fact, my recollection of my charge is that I said I wasn't trying to list them all; I just picked two principal illustrations.

Mr. Perry: Your Honor had charged, referring to our request No. 21, your Honor charged of course about circumstantial evidence and if there is any hypothesis and they are to give the defendant benefit of the doubt, but I would ask you to go further and charge that they cannot and may not draw any conclusion (1567) of guilt unless they affirmatively find no reasonable basis for hypothesis.

The Court: I think I said that two or three times. In other words, that unless all the circumstances convinced them beyond a reasonable doubt of the guilty element, why, that fact has not been established. I don't think I will go over it. I will take my chances on it.

Mr. Perry: On 23, your Honor, we especially brought to your Honor's attention in substance, your Honor, that is where we say if the jury concludes that there might be suspicion or other facts in connection with the defendant's conduct, that that is not sufficient, suspicion is not enough to convict.

The Court: I think I have covered that. I told them even if the Government had the preponderance of the evidence, if they had a reasonable doubt they must acquit.

Mr. Perry: Your Honor, in charge 27 we requested

that it is the Government's duty to investigate, that they don't win or lose a case, and I just want to make it clear——

The Court: I told them what their duty was. That was to bring back the truth.

(1568) Mr. Perry: Requested charge 30, the defendant and the Government are equal before the law, that they are not to give any special consideration to the Government.

The Court: I mean to charge them that. I think that sort of cheapens my charge on the presumption of innocence to open it now. I frankly meant to put it in before I charged on circumstantial evidence and I forgot. I will leave it entirely up to you. I don't think it helps the defendant at this point. It is something I meant to say, but I don't think it makes much difference.

Mr. Perry: Your Honor, we will defer to your Honor's thought.

The Court: All right.

Mr. Perry: One of the things I would again urge upon you, in the indictment all three counts charge a false and fraudulent statement was made. And you in all your discussion of this, unless I am mistaken, you in all your discussion spoke of false. Frequently a statement may be false but it may also not be fraudulent.

The Court: I told them that it had to be false and it had to be knowingly false and done with (1569) deliberate intent to deceive. I think I took your charge as to wilfulness. My charge in substance rotated around that.

Mr. Perry: Yes. You were very close to what we had suggested. The only thing that troubles me about not having charged "fraudulent" is the we had in our summation argued to the jury that the defendant was asserting a claim in good faith. The intent to deceive is part of the entire——

Requests to Charge

The Court: I think I will let it stand. My feeling was that I had made that fairly clear. I would have to charge on all of that. I couldn't talk about fraudulent without going back, without explaining how that fitted into wilfulness and everything else.

Mr. Perry: I don't recall, your Honor, when you discussed wilfulness that you differentiated between carelessness——

The Court: I think I specified that at least twice. In other words, mere negligent act or mere careless act was not enough. I am quite sure I did on the discussion of the third count, and I think that I referred to it once again.

Mr. Perry: I am at the end of our charges, (1570) the last two or three, so I am going to jump up a bit. We had requested in 36 and 37 that if the jury found that the letters upon which the indictment was based were substantially different than the allegations in the indictment that they should acquit. Your Honor did not charge that. Your Honor charged something different.

The Court: I charged that unless the purport and intent of these letters was as charged, they must acquit. I didn't put it in the language of variance because the question of variance is one for me rather than for them. I thought I gave you the full benefit. As a matter of fact, I thought I probably went further than perhaps I should. I may have done an injustice to the Government there, because even if there were variances and the Government proved a variance I think they probably proved their case. But the way I charged it to the jury, unless the jury finds the documents mean what the indictment says they meant, they haven't proved their case. I thought I would rather err in favor of the defendant than the Government on that particular question.

Mr. Perry: That would be all that I would call to your attention about your failure to charge (1571) as we re-

quested, and to the extent that your Honor has failed to do as we have requested we respectfully except.

Mr. Rosenblum: Also, in a general way I believe your Honor modified some of our requests and we except to such modifications as you made.

The Court: That is right.

Mr. Rosenblum: We have an exception as to that and also as to those charges where you failed to charge in the language we asked.

The Court: For the modifications or failing to charge.

Mr. Perry: I have made some notations as to objections we would make to your Honor's charge. I know Mr. Rosenblum has made some.

Mr. Rosenblum: I made some notations as to facts that your Honor stated. You finish yours.

Mr. Perry: Your Honor, in your factual recital, one thing we were trying to make clear during the course of the trial was that none of the tellers could possibly have seen anything that occurred at Mr. Miller's desk prior to the time Kennedy came over. They couldn't posibly—of course they could have. But they themselves testified they did not see anything prior to that time. (1572) The first thing they know is when Kennedy came over.

Your Honor said something to the effect, when we were discussing the third count, referring to Chernoff and whether or not Mishel came over, your Honor said something to the effect that the tellers claimed to have seen who was at Miller's desk at the time.

The Court: No. I said they saw that at the time there was nobody there. I think I will take my chance on that.

Mr. Rosenblum: This is on the same point. I believe your Honor stated that as to the question of identification as to whether the person was identified as Chernoff to Miller, there were two sources of information the Government produced; one is the testimony of Mishel and

the other was the tellers. I think as your Honor stated it it would appear that you were saying to them, appearing to give them the fact that at the time of the identification the tellers did see what was happening and that therefore when they said they saw no one at the desk with Mr. Mishel that they were testifying there was no person introduced. I think the testimony as given by the defendant is the man was brought over to him and (1573) identified as Chernoff, then he talked with the defendant about some other matter and this man returned.

The Court: I don't recall that.

Mr. Hallinan: No. Miller's testimony was that he sent guard Kennedy over and that ends his testimony. I will get you the page of the record for that.

The Court: No. Don't bother, because I am not going to charge it.

Mr. Perry: I believe there is not sufficient testimony to support your Honor's statement as to the time of the identification which the defendant claimed that the tellers were then alerted or then in position or had reason for looking over—for instance, let us assume that there was identification and then thereafter the man who was identified left and the bonds were given to Kennedy and he brought them to the teller. Their testimony would be as to what happened after Kennedy came to them and not to what happened before.

The Court: I understand your point. I don't think there is any factual basis for it, and I am sure that my charge, read in its context, and with the precautions that I have given to the jury (1574) they will not be misled.

Mr. Perry: Exception. The other thing I think your Honor said was that the defendant said that he knew that the payee was employed at Roth's Grill.

The Court: Did I say he knew?

Mr. Hallinan: I think you said he was informed.

Mr. Perry: If your Honor said that, if I am correct, I think it is a serious mistake of fact, and particularly since you took just some of the facts to bring it to their attention.

The Court: I don't think I said he knew. But if I did, it was so obvious that all I was doing was giving a sketch of the contentions that I don't think it is worth changing.

Mr. Perry: We take an exception to your Honor's refusal to charge and to recharge as to the two things I brought to your Honor's attention.

The Court: Yes.

Mr. Perry: I have a few more I wrote——

Mr. Rosenblum: Your Honor is refusing the request to recharge.

The Court: Yes. Anything I don't do I refuse (1575) to charge.

Mr. Perry: Your Honor, during that charge I think you used the exact language, "avoidance of initials on bonds," because I wrote it down in my notes as you were speaking at that time.

The Court: Did I say bonds?

Mr. Hallinan: I think you said redemption forms.

Mr. Perry: Either one. "avoidance" is the thing I have in mind. And then you followed that by saying that the Government claimed the practice of the bank was to put initials on. And you went on in that fashion. But actually I am sure that is the Government's contention that it was the practice of the bank to put initials on. But the defendant produced three witnesses. Brennan was the manager who said there was no fixed practice. The defendant said there was no fixed practice. I think Wilmot also indicated that there was no fixed practice.

Mr. Hallinan: Wilmot said the exact contrary. "What did the officer do?" "He would place his initials"——

The Court: I don't think it is worth going over. I think I made the defendant's position clear (1576) on that. Maybe I didn't.

Mr. Perry: The only thing, Judge, is that the way it was stated it was kind of, you know, it was the Government's position. The impression I got, Judge, and I wish I had your language because I may be unfair when I say it, but the impression was, I was left with the impression that it was kind of clear that that was the practice, that initials were to be put on there, and the absence of initials—that is why the word "avoidance" stuck out in my mind.

The Court: Oh, I remember how it got into it. In other words, the defendant's whole position was this wasn't false so he didn't have to get into the question of knowing the falsity. I think I just gave an illustration. I don't think I will go over it again. I didn't attempt to give any full-scale discussion of the evidence.

Mr. Perry: Your Honor, I sympathize with you in what you were trying to do in giving different illustrations of opinion and a statement. I can agree with you, it isn't the easiest thing in the world. But, frankly, I was a little confused by the illustrations you gave.

(1557) The Court: I think I have done the best I can. We will charge the confusion to the subject matter.

Mr. Perry: May I ask your Honor to do this? Would your Honor charge the jury that the form which was used to make the statement may, if they so conclude, be conclusive as to what the statement purported to be?

The Court: I think that is instinct in what I said. In other words, I don't want to make it look as though the burden is on the defendant to sustain the form. The way I think I put it was, the question is whether they could read it the other way.

Mr. Perry: My only thought, Judge, for clarity would be, if the statement were "I believe" that the jury pretty

much has to say, well, this is a statement of an opinion unless revised.

The Court: I will tell you, Mr. Perry, rather than unravel the whole subject matter I think I will let it stand as it is, because there is no way that you can talk about any one element of it without getting into the main question. My thought was that I had made a fairly clear picture of it and left it to the jury to decide which category this one is.

Mr. Perry: Then, in the first count you are (1578) speaking of the Government's theory that Miller had to know that the bonds were not properly cashed in accordance with the Government procedure, and therefore it is entirely immaterial what anybody said to him, and I would respectfully suggest——

The Court: I thought you had to find both. As a matter of fact, I tried to bend over backwards in your favor. I said that to prove that wrong they had to prove both that it was in fact wrong and that there was no reasonable basis in the information which he had or that he had no information. I think that is what I said.

Mr. Perry: Perhaps I misunderstood.

The Court: As a matter of fact, I think I got that from your request, too.

Mr. Perry: Well, factually there is, understandably so, perhaps, a little confusion with some of the bonds. You had confused the Missouri Pacific bonds with the Alpren stock when you were speaking of the loan made at the bank.

The Court: Well, is it worth getting into? All I tried to do was to get that whole business down to a level where I think it belongs. I don't think I will go back into that again.

(1579) Mr. Hallinan: I took it in the sense in which it came out of the case. There was a loan, later the Alpren stock was put up as security——

Mr. Rosenblum: The Judge said Missouri Pacific.

Mr. Hallinan: Oh, I didn't hear the words.

The Court: The Missouri Pacific was part of the—that was the $5000 loan.

Mr. Rosenblum: No. On the $1300 loan it was Missouri Pacific. You said the loan and he then brought in Missouri Pacific bonds.

The Court: I don't think that whole issue merits any further discussion, so I will let it stand.

Mr. Perry: Then on the question of credibility of the witnesses and the question of coming out with prior convictions and so forth, your Honor said something to this effect, that anything that the witness had ever done that was wrong you could ask him about it. Something to that effect.

The Court: I said in a general way. Then I indicated also that I had limited both counsel in that regard.

Mr. Perry: Yes. That is exactly what I had in mind, sir. Actually you said you had limited (1580) it to both counsel when you said that anything ever done wrong you could ask the witness about it. But we were precluded from showing that there was a good deal more was wrong about Mishel that we could have shown.

The Court: I think that is fairly apparent. I will let it stand.

Mr. Rosenblum: I think you said every item of a person's life so that you can determine what the witness's credibility is.

The Court: I think I said that in a general way, and I said that most of our conferences at the bench had been with respect to how far you could go, both counsel were going to go——

Mr. Rosenblum: I think that the damage might be in the sense that the jurors get an idea that you did permit us to go into all these facets, you see, that we had a right

to go into, and I think the most we went into was a very insignificant portion of what we wanted to go into.

The Court: I will let it stand. My recollection of the charge is that it was——

Mr. Perry: Your Honor said something to the effect that the probative value of prior misdeeds, (1581) except as they may shed some light on matters in the indictment—that may not be quite accurate.

The Court: That may well be what I said. In other words, it was only insofar as they served to illuminate the issues before us. Then I think I went on to explain that they related to credibility and to knowledge. I also went on to say I thought you were trying to develop a tendency to drag Miller into every mess that Mishel himself was in, in other words, to bear out your contention of revenge. I think that is covered adequately. I will let it stand.

Mr. Perry: Your Honor, this ties in somewhat with the other, something about anything that a witness had ever done that was wrong you could ask him about. Later on when you got to the point you charged as we requested, that the defendant was only on trial for this particular crime and nothing else. That is all right. But then you went on to say in effect that we would be here until Christmas if counsel could prove what they tried to do and tried to prove other events not charged in the indictment. The impression was left that they were discussions of Miller's prior misdeeds and we would then be here until Christmas.

(1582) The Court: I will clarify that. Don't let me forget that. I will make it clear I was talking about Mishel.

Mr. Perry: Yes. And for the same reason, the illustration when you talked of the liquor and the policeman. That was the defendant, you see. And that illustration of the liquor and the policeman——

The Court: There I was trying to make sure that they didn't let any bias hurt Miller.

Mr. Perry: That we certainly think was good. But it followed after this business at the bench, "until Christmas."

The Court: All right.

Mr. Hallinan: I just have two. I ask your Honor to charge No. 4. A false statement made without knowledge as to the truth or falsity of the facts is a false statement knowingly made——

The Court: No.

Mr. Hallinan: One other thing I would like to ask your Honor to charge. You have stated, is this the kind of statement that is likely to mislead. I would ask your Honor to charge that it doesn't have to succeed, that the department doesn't have to act (1583) upon it.

The Court: Fine.

Mr. Perry: Your Honor has charged that.

The Court: No. I never touched it one way or the other.

Mr. Perry: He said it doesn't have to succeed, is what your Honor said.

Mr. Rosenblum: I think if you reemphasize——

The Court: I said it has to be something which could conceivably sway the Federal officer one way or the other.

Mr. Hallinan: Two or three times your Honor said that. And I made a note. I think that is very important. I don't think they should have the opinion that it has to succeed.

Mr. Perry: I would respectfully except.

The Court: I will let it stand.

(The following proceedings in open court in the presence of the jury.)

The Court: There is only one thing I want to make clear that—you know we got off in that discussion of other acts, possible illegal acts not charged in the indictment—and I said that I had limited counsel in their efforts to fully explore (1584) them, in their colloquy here at the bench, I did not mean to suggest in the least that they were acts relating to the defendant. They were acts re-

lating to Mishel. That I did not want to get into a trial of every event that he had gotten into in his past, in view of his admission that he had been, as he said, a bad boy for at least five years, and we had enough to do to try the issues we had here. But the colloquy was with respect to his crimes and nobody else.

All right. We are going to excuse the two alternates with the thanks of the Court. I am very grateful to you for your punctuality and the interest you have given the case. You are excused now.

(Two alternate jurors excused.)

(Two marshals sworn.)

The Court: The jury may retire.

(Jury retires at 11.40 a. m.)

The Court: I think we had better stay in the court house. I will probably let the jury go to lunch some time after one, after the principal noon rush has thinned out a little bit.

(11.55 a. m.)

The Court: I just had a note from the jury. (1585) "Please furnish us with the indictment and the letters in connection with same."

I assume they want the letters that I have up here. These are the exhibits.

Mr. Hallinan: 22, 23 and 24.

The Court: And the circular letter, what is that?

Mr. Hallinan: That is 21.

The Court: Off the record.

(Discussion off the record.)

The Court: We are going to have to staple the backs so that they can't see any of the entries on the back. I will just give these to you to send in.

On further exhibits, do you want me to get you in to talk with you about it or do you want the clerk to send in anything they want?

Requests from Jury

Mr. Rosenblum: I think it might be better if you let us know.

The Court: All right.

(Requested exhibits sent in to the jury.)

The Court: I guess if there is any further request we will hear from them.

(12.25 p. m.)

(1586) The Court: I have another note. The jury says, "Please furnish us with Treasury Department letter of November 16, 1956 to James W. Miller." The year—I think they want the letter that is referred to in the letter of December. You know, it says, "Certain particulars in your letter were wrong."

Mr. Rooney: Defendant's Exhibit AV I think is the one they are referring to.

Mr. Hallinan: I think we may have a problem. I am not sure you offered that.

The Clerk: I think AV is in.

Mr. Hallinan: AV is in evidence, yes. November 16.

The Court: I am sure that they have gotten the date from the letter they already have in there because as I remember at the end of paragraph 2 it says, "Further, item 2 in your letter was wrong," something like that. That is what they want. Could I see that, Mr. Hallinan, to make sure I know what is going in.

(Mr. Hallinan hands to the Court.)

The Court: All right. You give it to the marshal. All right, we will recess again.

(1587) (Exhibit sent in to the jury.)

(1.15 p. m.)

The Court: I think we will send the jury to lunch. Recess until 2.30.

(Recess to 2.30 p. m.)

Requests from Jury

(2.25 p. m.)

The Court: I have another note from the jurors. "Please furnish us with Treasury Department letter dated March 11, 1952, from James W. Miller." That must be the letter to which the April letter was a response.

Mr. Rooney: Defendant's Exhibit AK.

Mr. Hallinan: Somebody has a photographic memory or else they took notes.

The Court: No. I think the letters refer back.

Mr. Hallinan: Oh.

The Court: All right. We will recess again.

(Recess.)

(2.45 p. m.)

The Court: The jury would like some testimony read at this time. "Please furnish us with a transcript of Miss Graef's testimony at this trial."

I think it would be better if we read the (1588) testimony to them here. As I remember it, she was interrupted by Mr. Heffelfinger.

Mr. Hallinan: That is right.

The Court: She testified one afternoon and then she came in the latter part of the following morning and went over to the following afternoon.

(Jury in box.)

The Court: Mr. Foreman, the communication I have is, "Please furnish us with transcript of Miss Graef's testimony at this trial."

Now although it may seem clumsy to you, we can't do that, but we will read it to you. So, the stenographer is now going to read the testimony of Miss Graef to you and you just sit back in the meantime while we get it.

If there is any way in which you could specify any portion, why, we would be perfectly glad to have you do that, but if you would rather have the entire testimony read, why, that is the way we will do it.

The Foreman: I——

The Court: I don't want individual comment now. Is

this something you want to talk to the other jurors about as to whether you want to specify any portion of it or should we go ahead and read the entire testimony?

(1589) A Juror: Do we have to go back in the back and talk?

The Court: I think it will probably be better, if there is going to be any extended discussion on this. You go back in the juryroom for a few minutes. There seem to be some of you want to say something. I am sorry for these mechanical troubles but there is no way around it. You go back, and take your time, don't worry.

(Jury retired.)

Mr. Rosenblum: Your Honor, in the light of the request of the jury I think that it all should be read.

The Court: Do you want it all read?

Mr. Rosenblum: I am afraid that it is going to be difficult to take part and say this ought to apply and something else ought to apply. In the light of the note which came from the jury I would prefer that it all be read.

The Court: The fact is, I can't tell them what they want. They would like a transcript that they could refer to, and I don't think we should do that. I just want to know what they really want, in view of the mechanical problem we have, and I have made it (1590) clear to them that they can have the entire testimony if they want it. We will see when they come back. If they have any problem at all, why, we won't be hasty here.

I think we will take a few minutes' recess. I will wait in the robing room for a while.

(Recess.)

The Court: Bring them in.

(Jury returned at 3.03 p. m.)

The Court: Mr. Foreman, another note for me.

The Foreman: May I give it to you that way?

The Court: Yes, sir.

Now I would like to ask you to wait right there. Don't

talk or say anything. I will call counsel into the robing room with the stenographer. And bring the minutes.

(The following proceedings took place in the robing room.)

The Court: They want all her testimony as to her cashing of the Chernoff bonds. We have all the testimony on direct and cross on that subject.

We start with "What was your job at the Pennsylvania Exchange Bank?" on page 450. I would leave out the stuff on the diagram. Do you think that (1591) is very meaningful?

Mr. Hallinan: No. Does your Honor say that starts on 450? There is preliminary matter, too.

The Court: I think you have to get her job, don't you?

Mr. Hallinan: All right.

The Court: That is what it would seem to me. As I remember it, you didn't waste much time on that.

I think what I would do is read the question. "Now, if you can, would you turn around and look at that chart," and then simply say that we won't repeat that part about where she identified her desk and so forth.

Then we come down to page 453, "Are you familiar with a person by the name of Irving Mishel?" Then we go on and skip the colloquy.

Now I would leave out that about the blank pads, redemption forms.

Mr. Rosenblum: What page?

The Court: I am up to 461. "Did Mishel ever introduce anyone to you as Nat Chernoff?" "No, he did not." "As a matter of fact, did you ever speak to Irving Mishel at the bank?"

"No, I did not." (1592) Then I would quit at that, after "No, I did not," and about whether the redemption forms were kept and about the pad.

He comes down to page 463, "Miss Graef, I show you Exhibit 13," that is the bond register.

Mr. Perry: Is that in connection with the cashing of the bonds? You are leaving it out.

Mr. Hallinan: This is what she testified to, the complete procedure she followed.

The Court: "The bond register sheet on which I showed the cashing of the Chernoff bond"—do you want the bond register and all that?

Mr. Hallinan: I don't think it is necessary.

Mr. Perry: I wouldn't say it is necessary.

The Court: On 466. But this is all regarding the bond register.

Now we begin the cross. I don't see the first part at all about the conversation she had with Sershen.

Before we leave the first part, Mr. Hallinan, the first part that I have said we have started with was page 450, "What was your job at the Pennsylvania Exchange Bank?" And then we went over to the diagram, page 452. I stopped before that first question on (1593) page 452. I don't see any point in going into the diagram at all.

Mr. Perry: No.

The Court: Then we go over to 453. "Are you familiar with a person by the name of Mishel?" And then that goes on. That is the long gap. Have you got that, the ending on that?

Mr. Perry: You are eliminating some on 454, Judge, the colloquy.

The Court: The colloquy goes out.

Mr. Perry: Yes. Just leave out the colloquy. That goes to the top of 462.

Mr. Hallinan: 461 I think. You left out beginning with "Was anyone introduced to you"——

The Court: No, we take that. Down to "No, I did not," at the top of 462.

I guess that is all, isn't it?

Mr. Perry: All the rest of that is out.

The Court: The first part has in it the instructions.

Leave that out. We will start with, "Do you know Irving Mishel," and then we will go on. On page 547, "On the occasion when you cashed the Chernoff bonds—let me ask you this:". Now I would stop at 548 where you say, "Did you have occasions (1594) when other officers sent"—you get off into the general practice then. I would stop after the word "approval" on the first line of 548.

Mr. Hallinan: We get back into it on 548 also.

The Court: "Were these bonds approved"?

Mr. Hallinan: Yes.

The Court: Shall we leave out that question and answer there or do you want it in?

Mr. Perry: No, we can leave it out. How about picking up, "Do you recall speaking with Mr. Perry?"

The Court: We will leave that out.

Mr. Perry: Put it in. It goes into the same——

Mr. Hallinan: "Were these bonds approved when they were sent over that way? No, they were not."

Mr. Perry: You have it further back where you left in the part about, "Did you feel any impropriety in cashing the bonds?"

The Court: Do you want that out or in?

Mr. Perry: Well, you left it in before.

The Court: Do you want it in?

(1595) Mr. Hallinan: I would, yes.

Mr. Perry: If you want that in, then I think that part should be left in.

The Court: I wonder whether we want to get into the impropriety. I thought all they want is the relation of the facts which occurred at the cashing.

Mr. Perry: You take out the other and we take this out, otherwise you have half a story.

The Court: We will leave out the whole business I think because we want to keep this as concise as we can.

I would leave out the whole business, 547 and 548, al-

though he does ask a few particulars about this incident, he is really asking to compare this incident with the general practice. I think we will leave that out.

Mr. Hallinan: 549 he gets back into this.

Mr. Perry: What about cashing? No. "You felt the bonds should have been initialed?" Now we are talking about something after the——

Mr. Hallinan: No. "You say that M. Kennedy said that Mr. Miller approved it, and, therefore, you cashed it?"

(1596) Mr. Perry: Then we have to have the next question, "Did you make it a practice to ask that every bond be initialed that you cashed?

"No, I did not."

Leave them both in or leave them both out.

The Court: I think I will probably leave that out. I will tell the jury, if you want, that I have limited this to the recital of what happened on this particular occasion, not general practice or anything else.

552 I think we get back to.

Mr. Perry: Yes.

The Court: Down at the bottom, the last question.

Mr. Perry: "Now on the occasions"—is that what you have in mind, Judge? I didn't know where you were running to.

The Court: "I think you said on one of the occasions when you cashed the bonds," I would start there, "which you testified about."

Mr. Perry: Which is that? On 552?

The Court: Yes. The second line from the bottom. "I think you said on one of the occasions when you cashed the bonds, which you testified about (1597) on your direct, you looked over and you saw Mr. Mishel sitting near or at the desk of Mr. Miller." And then you developed that point that you wanted me to emphasize this morning, "Would you know when he came in to the bank on that day?

"No."

I guess we will skip that colloquy. Then we will go ahead with the next question about how long was he there.

"I can't say."

552, the second line from the bottom we begin down to the second answer on 553, and then we start with the question after the "Court" and go down through the rest of that page.

Mr. Perry: There is colloquy on 554. You want that out.

The Court: The question stays in, though, because I overruled the objection. Leave that colloquy out. This cross all goes in because this is all on the subject.

Mr. Perry: The colloquy on 556.

The Court: Yes, that goes out.

Mr. Perry: There is some more following that between Mr. Hallinan and the Court. I think (1598) the rest of that is all colloquy. Starting with "Mr. Hallinan: I object to that" on 556 down to the bottom of that page is all colloquy.

The Court: That question that is never answered, we will leave that out.

Mr. Perry: Yes, leave that out.

The Court: I guess that is the end. Do you want to go into this stuff about the conversation with Mr. Perry? I have left out all of the conversation with Sershen, and I don't think that had anything to do with this anyhow. That stuff with Mr. Perry got us nowhere. So why don't we leave that out? Do you want this about where the opening was?

Mr. Rosenblum: No.

The Court: Have you got this so that you can pick up the pages?

Mr. Hallinan: Fairly well, yes. A couple of them I missed.

The Court: This is all general (turning pages).

Mr. Perry: Yes, Judge, so far.

The Court: I am up to 573.

Mr. Hallinan: This is all about the bond register.

(1599) The Court: She never spoke to Miller about the bonds. Do you want that? That is page 577. Then you get into the bond register there. 578.

Mr. Perry: Are we going to take in——

The Court: I left out all about the bond register.

Mr. Perry: No, not the bond register. 577. Are you going to——

The Court: I was going to leave all that out. I don't think they are interested in that. They are interested in what she said happened. That is it I guess.

Off the record.

(Discussion off the record.)

(The following proceedings took place in open court in the presence of the jury.)

The Court: Mr. Foreman, what we have done is cut down the testimony to the actual parts dealing with the incident in the bank and we have left out everything as to practice and so forth, and if when you go back in the juryroom you want more of it, you let us know. But we have done our best to give you what we thought you asked us for.

The Foreman: Thank you.

(1600) (Portions of testimony of Virginia Graef read as previously indicated.)

The Court: All right. The jury may retire now.

(Jury retired at 3.40 p. m.)

The Court: The court will recess.

(Recess.)

(Jury returned to the courtroom at 4.00 p. m.)

The Clerk: Ladies and gentlemen, please answer as your name is called.

(Clerk calls names of jurors. All jurors present.)

The Clerk: Mr. Foreman, have you agreed upon a verdict?

Verdict

Motion to Increase Bail

The Foreman: Yes, we have.

The Clerk: What is your verdict, sir?

The Foreman: Your Honor, we find the defendant, James W. Miller, guilty of the three counts in the indictment.

The Clerk: Ladies and gentlemen of the jury, listen to your verdict as it stands recorded. You say you find the defendant, James W. Miller, guilty on all three counts of the indictment?

The Foreman: That is right.

(1601) The Clerk: And so say you all.

Mr. Rosenblum: May the jury be polled, your Honor?

The Court: All right. Poll the jury.

(Jury polled.)

The Court: The jury is excused with the thanks of the Court.

I will tell you, for whatever it may be worth, I think there was ample basis in the record for your verdict. So you are excused, and thank you again for your fine service.

(Jurors retired from the courtroom.)

Mr. Rosenblum: May we delay the motions to the day of sentence, your Honor?

The Court: All right, very well.

Mr. Rosenblum: May the defendant be continued in bail? He is a married man, he has a daughter, and he lives with his family.

The Court: Mr. Hallinan?

Mr. Hallinan: On instructions of my office I am not going to move to remand the defendant but I would move to increase bail to $25,000.

The Court: What is the bail now?

Mr. Hallinan: 10,000.

(1602) Mr. Rosenblum: 10,000. Frankly, it just means an additional expense to the man.

The Court: Mr. Hallinan, do you have any——

Denial of Motion to Increase Bail

Motion to Set Aside Verdict

Mr. Hallinan: Just the fact that it is after conviction.

Mr. Rosenblum: I would like to save him that expense.

Mr. Hallinan: May we approach the bench, off the record?

The Court: Yes, come up.

(Conference at the bench between Court and counsel off the record.)

The Court: Well, I will continue bail in the present amount. What date would you like for sentence?

Mr. Hallinan: Any date would be satisfactory.

Mr. Rosenblum: I think we ought to have a probation report.

The Court: I think so too.

Mr. Hallinan: I agree.

Mr. Rosenblum: Three weeks from now. I know in Room 318 they ask for about three weeks.

The Court: Well, we will make it November 27 at 10.30. I think I will be in Room 1506 at that time. All right. You will reserve motions until then.

(1603)

New York, November 30, 1956;
10.30 o'clock a. m.

Present:

Mr. Hallinan,
Mr. Rosenblum,
Mr. Rooney.

The Clerk: United States of America v. James W. Miller. Ready, gentlemen?

Mr. Hallinan: The Government is ready.

The Court: All right.

Mr. Rosenblum: May it please the Court, I first move to set the verdict aside upon the grounds that it was con-

trary to the evidence and the weight of the evidence and upon the ground that the charge was improper as a matter of law, and upon the further ground that Court's rulings on the questions of law and the admissibility of evidence were improperly made, and upon all the grounds provided by the Rules of Criminal Procedure.

May I make it all at one time?

The Court: Yes.

(1604) Mr. Rosenblum: In addition, your Honor, we have made a specific application, the original of which I believe has been forwarded to your Honor.

The Court: I have it here. Do you want it filed?

Mr. Rosenblum: Yes. If you have it filed I think I can save some time in what I say to your Honor.

This application is predicted upon all the prior proceedings which we have had in this case, included in the minutes of the trial and all the exhibits which were admitted in evidence, and we ask for an order as provided by Rules 29 and 33 of the Rules of Criminal Procedure, we ask to set the jury's verdict aside, and that is the verdict which they rendered on November 22, 1956, and we ask for a direction of judgment of acquittal or in the alternative for a new trial. The grounds are set forth in the application which your Honor has just filed. I asked for that so that I think I can save some time, because I believe that many of these points have already been argued before your Honor. And unless your Honor wanted some additional argument on some items, I intended to possibly touch on some where I think that (1605) maybe a few words might be said by me. I wanted to point out, of course, on the various questions, I think that was pretty thoroughly briefed and a copy was submitted both to the Government and to your Honor.

Of course we in substance, and I may be saying it a little differently than was said previously, we say that the crime which is charged would depend on whether or not the defendant did represent or state in the letter of De-

cember 26, 1951—I am referring to count 1; of course the same would likewise apply as to count 2—that the bonds were cashed in accordance with the procedures provided by the circular letter which was referred to during the trial. The indictment of course doesn't say that we stated that we were informed and that that statement is false. It has never been set up that way. They have stated, as your Honor knows, and I won't repeat it, that we made a false representation, that we cashed the bonds and that the bonds were cashed as provided by the requirements of the circular letter.

We urge again and we believe that if there was a false statement the one that should have been charged in the indictment was the fact that we made (1606) a false statement when we said we were informed. And then you know what would follow, and I am not going to take the time to go into those details.

The Court: I think we have been over that.

Mr. Rosenblum: And it has been said a little differently, and we have covered it, and that is why I do not intend to take much time on that.

I do think that in connection with the points that we raise now as to the defectiveness of the indictment, I think that has not been discussed in that particular way, we wanted to point out that at the time that your Honor charged in this regard, that is, in regard to whether or not what we said in counts 1 and 2 was a statement of fact, it was a statement of opinion, your Honor took the position that we were contending that it was a statement of opinion. We say no, we are contending that what he said is a statement of fact. In this regard may I point out, let us say as to count 2, when we advised the Department, as we did by the letter which was sent, we were not trying to say this is our opinion; we were saying this is the fact. And when your Honor submitted the matter to the jury on the basis that, and you were practically saying it as a (1607) matter of law, what the Government was saying

was a matter of fact and that we were trying to meet it by saying it is a matter of opinion, we say that the fact that we were informed as to count 1 or when we expressed the opinion that it is our belief that we lived up to the spirit and the requirements of the circular letter, we were not expressing an opinion. We say that is a fact. Now, if that fact was false then that would be another matter. But we don't say, as your Honor charged the jury at the time, that we were contending that this is a matter of opinion and not a matter of fact; we urged as to both those counts that it is a matter of fact and not a matter of opinion.

The Court: My only comment on that is that the charge was undoubtedly favorable to the defendant. Go ahead.

Mr. Rosenblum: I am trying to skip some of this because I know we have covered it. I only want to touch on those that I think we should bring to your Honor's attention.

Your Honor knows that we have urged that we believe that your Honor unduly curtailed our cross-examination of Mishel, the grounds of which (1608) we stated. And we bring to your Honor's attention the leading case, we think, Alford v. United States, 282 United States 687, which your Honor most likely is fully familiar with.

The Court: Yes. I gave that a lot of thought at the time, and if it is wrong it is wrong. But I don't think it is.

Mr. Rosenblum: Also in that same regard may I bring to your Honor's attention the case of U. S. v. Gruber, 123 Fed. (2d) 307, a Second Circuit case, and Collenger v. U. S., 50 Fed. (2d) 347, which is a Seventh Circuit case in which they held that "We think there is substantial authority that cross-examination of specific acts of misconduct are not excludable as collateral if the purpose is to impeach the credibility of a witness."

Motion to Set Aside Verdict

The Court: I am not going to go through and restudy my whole decision on that question. I don't think it is inconsistent with those holdings, or such a holding, let me say.

Mr. Rosenblum: I think your Honor knows that we have brought to your Honor's attention the fact that we believe there is a failure of proof as to the question as to whether or not the Government has (1609) established that the matter was within the jurisdiction of a department or agency of the United States and that, therefore, we feel that this should require, if that is so, that there be a dismissal of the indictment. I know your Honor has stated in your charge to the jury that you were taking judicial notice, or at least Mr. Hallinan at one point took the position that he was urging to you that you could take judicial notice of the particular item. In effect, I think your Honor did that in your charge to the jury. And based upon the Moore case, 185 Fed. (2d), the Starr case, 131 Fed. (2d), 190, they express our contention that the proof of that particular item cannot be dispensed with as an element of the crime which we think must be proved by evidence which should have been adduced here. And we believe that your Honor was in error when you stated that you thought you could take in effect judicial notice of that particular fact.

The Court: I am content with the record as it now stands.

Incidentally, as we go through here, by my failing to take issue with you in any of your statements I do not suggest that I am acquiescing in them. (1610) I am just simply not going to take time to rediscuss them.

Mr. Rosenblum: The other matter I am not going to go into, the venue, jurisdiction, matter. I think your Honor is fully familiar with that.

We have one last thing that I think occurred during the charge that I would like to direct your attention to

and that deals with two counts. In connection with the third count your Honor said this at pages 1529 and 1530. "The next question is are you convinced beyond a reasonable doubt that the statement in the letter was false, the statement that Mishel introduced the person to the defendant as Chernoff."

Then you said, "Now that gets us into one of the heart questions, whether in fact Mishel introduced the person to the defendant at the time these bonds were cashed as Chernoff or whether he did not. The defendant claims that he did. And he has testified that he did. The prosecution claims that he did not, and in that course they have submitted Mishel as a witness and they have produced the tellers who claim to have seen who was at Mr. Miller's desk at that time. (1611) Yon have heard the testimony in that regard."

This was referring to the occasion when Mr. Miller claimed that a man was introduced to him by the name of Chernoff and Mishel said of course that there was never such an introduction. I think that I specifically brought it to your Honor's attention when we had the recess after your charge and that we since that time have taken the evidence of the three tellers—because we know what Mishel said; he said there was no introduction and we know that the defendant said that there was an introduction. And we think as your Honor said it here and the way you charged it to the jury you were in effect saying that you may consider, it is for you to say since these people testified in effect, or at least the Government claimed that they were giving testimony in effect as to what occurred at the time of the introduction. For an analysis of the testimony of the three tellers, if you take Graef, if you recall it also came a little more into focus when you remember that part was reread to the jury at the end and she said she first knew about it after

Kennedy had brought the bonds to her. She didn't know whether anybody was or was not brought to Mr. (1612) Miller before that time. As far as Horan was concerned, he says exactly the same thing. As far as Lucey was concerned, he says exactly the same thing. So that the only testimony which they give on that point with reference to what occurred at the time of the the claimed introduction, I think where you Honor said it was up to the jury, it looked as though you said in effect it was for them to say, examining the testimony, because the Government claims that that is corroboration. And considering the length of the record, the involved case that it was, I believe that it might be the basis for the jury's verdict on the third count. Of course as your Honor treated it, starting with the third count and going back to the second and the first, I think it might have an effect upon the second and first counts.

I bring that to your Honor's attention as a very substantial basis for our motion for the relief which we set forth in the application. And, of course, without going into any of the other items which I am not touching on, we are relying upon everyone of the items which are identified as A to M, inclusive, in the motion papers.

(1613) The Court: All right. I have already expressed my view on the point about the charge which you have just made, and I feel all the more strongly on it, inasmuch as Miss Graef's testimony was carefully reread on the entire subject as the last thing which the jury heard. So I think in view of these cautions, I doubt that there is any inaccuracy in the charge, but if there was I think I made it clear to the jury that I was not presuming to tell them what the facts were. So I will deny your motions in all respects.

Mr. Rosenblum: I respectfully except.

Office - Supreme Court, U.S.
FILED
OCT 23 1957
JOHN T. [illegible], Clerk

No. 581

United States Court of Appeals

FOR THE SECOND CIRCUIT

UNITED STATES OF AMERICA,
Appellee,

-v-

JAMES W. MILLER,
Appellant.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

APPENDIX FOR UNITED STATES OF AMERICA

PAUL W. WILLIAMS,
United States Attorney for the Southern District of New York,
Attorney for United States of America.

ADELBERT C. MATTHEWS, JR.,
GEORGE C. MANTZOROS,
MAURICE N. NESSEN,
Assistant U. S. Attorneys,
Of Counsel.

INDEX TO APPENDIX

	PAGE
Indictment	1a
Government Exhibit 10	2a
Government Exhibit 11	4a
Government Exhibits 1A through 8A	6a-12a
Government Exhibit 21	14a
Government Exhibit 20	19a
Government Exhibits 20A and 20B	21a, 22a
Defendant's Exhibit AV	23a
Government Exhibit 22	25a
Defendant's Exhibit AL	26a
Defendant's Exhibit AK	28a
Government Exhibit 23	29a
Government Exhibit 27	30a
Government Exhibit 28	31a
Government Exhibit 28A	32a
Government Exhibit 29	34a
Government Exhibit 29A	36a
Government Exhibit 30	36a
Government Exhibit 31	38a
Government Exhibit 31A	39a
Government Exhibit 24	40a

(1631)

COUNT I

On or about December 26, 1951 at the Southern District of New York, JAMES W. MILLER, the defendant herein, in a matter within the jurisdiction of a department of the United States, namely, the Fiscal Service of the United States Treasury Department, did unlawfully, wilfully and knowingly make a false and fraudulent statement as to a material fact to the effect that a quantity of bonds in the names of members of the Nat Chernoff family were properly cashed in accordance with procedures laid down by circular letter of the United States Treasury Department, whereas in truth and in fact as the defendant then and there well knew, the said bonds were not properly cashed in accordance with procedures laid down by the said circular letter. (Title 18, Section 1001, United States Code).

COUNT II

On or about April 4, 1952, at the Southern District of New York, JAMES W. MILLER, the defendant herein, in a matter within the jurisdiction of a department of the United States, namely, the Fiscal Service, of the United States Treasury Department, did unlawfully, wilfully and knowingly make a false and fraudulent statement as to a material fact to the effect that a quantity of bonds in the names of members of the Nat Chernoff family were properly cashed in accordance with procedures laid down by circular (1632) letter of the United States Treasury Department, whereas in truth and in fact as the defendant then and there well knew, the said bonds were not prop-

erly cashed in accordance with procedures laid down by the said circular letter. (Title 18, Section 1001, United States Code).

COUNT III

On or about June 4, 1952, at the Southern District of New York, JAMES W. MILLER, the defendant herein, in a matter within the jurisdiction of a department of the United States, namely, Fiscal Service of the United States Treasury Department, did unlawfully, wilfully and knowingly make and cause to be made, a false and fraudulent statement as to a material fact to the effect that one Irving Michel introduced a person to the defendant, JAMES W. MILLER, as Mr. Chernoff, whereas in truth and in fact as the defendant then and there well knew, he did not introduce any person to the defendant as Mr. Chernoff. (Title 18, Section 1001, United States Code).

Government Exhibit 10

Signature card of Thomas Young.

(OFFSET)

[*For convenience of Court and Counsel this Exhibit is bound in on the opposite page.*]

(p. 3a)

Government Exhibit 10

THOMAS YOUNG — INDIVIDUAL

DEPOSITOR—HEREBY MUTUALLY AGREE, FOR VALUE RECEIVED, THAT IN RECEIVING ITEMS FOR DEPOSIT OR COLLECTION, THIS BANK ACTS ONLY AS DEPOSITOR'S COLLECTION AGENT AND ASSUMES NO RESPONSIBILITY BEYOND THE EXERCISE OF DUE CARE; ALL ITEMS ARE CREDITED SUBJECT TO FINAL PAYMENT IN CASH OR SOLVENT CREDITS. THIS BANK WILL NOT BE LIABLE FOR DEFAULT OR NEGLIGENCE OF ITS DULY SELECTED CORRESPONDENTS NOR FOR LOSSES IN TRANSIT, AND EACH CORRESPONDENT SO SELECTED SHALL NOT BE LIABLE EXCEPT FOR ITS OWN NEGLIGENCE. THIS BANK OR ITS CORRESPONDENTS MAY [illegible] ITEMS, DIRECTLY OR INDIRECTLY, TO ANY BANK INCLUDING THE PAYOR, AND ACCEPT ITS DRAFT OR CREDIT AS CONDITIONAL PAYMENT IN LIEU OF CASH; IT MAY CHARGE BACK ANY ITEM AT ANY TIME BEFORE FINAL PAYMENT WHETHER RETURNED OR NOT, ALSO ANY ITEM DRAWN ON THIS BANK NOT GOOD AT CLOSE OF BUSINESS ON DAY DEPOSITED, AND IT IS FURTHER MUTUALLY AGREED, THAT THE SIGNATURE OF THE DEPOSITOR HERETO ATTACHED IS TO BE RECOGNIZED BY THE BANK IN PAYMENT OF FUNDS OR IN THE TRANSACTION OF ANY BUSINESS FOR THIS ACCOUNT.

THE BANK IS AUTHORIZED TO MAKE A CHARGE FOR SERVICES IF, ON ANALYSIS, THE ACCOUNT DOES NOT COVER THE COST OF HANDLING AND TO CHARGE FOR CHECKS RETURNED WHEN FUNDS ARE NOT AVAILABLE. THE BANK IS ALSO DIRECTED TO MAIL MONTHLY STATEMENTS OF THIS ACCOUNT TOGETHER WITH CANCELLED VOUCHERS BY ORDINARY MAIL TO US AT THE ADDRESS GIVEN BELOW, AND THE BANK IS HEREBY RELEASED OF ANY LIABILITY BECAUSE OF THE NON-RECEIPT OF SUCH STATEMENT.

Thomas Young

ADDRESS 515 Seventh Avenue NYC PHONE

INTRODUCED BY JWM OPENED BY INITIAL DEPOSIT 935.00

BUSINESS ~~Salesman~~ DATE 6/20/49

THE PENNSYLVANIA EXCHANGE BANK

FORM 15

Government Exhibit 11

Signature card of John Case.

(OFFSET)

[*For convenience of Court and Counsel this Exhibit is bound in on the opposite page.*]

Government Exhibit 11

(p. 5a)

JOHN CASE — INDIVIDUAL

DEPOSITOR—HEREBY MUTUALLY AGREE, FOR VALUE RECEIVED, THAT IN RECEIVING ITEMS FOR DEPOSIT OR COLLECTION, THIS BANK ACTS ONLY AS DEPOSITOR'S COLLECTION AGENT AND ASSUMES NO RESPONSIBILITY BEYOND THE EXERCISE OF DUE CARE. ALL ITEMS ARE CREDITED SUBJECT TO FINAL PAYMENT IN CASH OR SOLVENT CREDITS. THIS BANK WILL NOT BE LIABLE FOR DEFAULT OR NEGLIGENCE OF ITS DULY SELECTED CORRESPONDENTS NOR FOR LOSSES IN TRANSIT, AND EACH CORRESPONDENT SO SELECTED SHALL NOT BE LIABLE EXCEPT FOR ITS OWN NEGLIGENCE. THIS BANK OR ITS CORRESPONDENTS MAY SEND ITEMS, DIRECTLY OR INDIRECTLY, TO ANY BANK INCLUDING THE PAYOR, AND ACCEPT ITS DRAFT OR CREDIT AS CONDITIONAL PAYMENT IN LIEU OF CASH; IT MAY CHARGE BACK ANY ITEM AT ANY TIME BEFORE FINAL PAYMENT WHETHER RETURNED OR NOT, ALSO ANY ITEM DRAWN ON THIS BANK NOT GOOD AT CLOSE OF BUSINESS ON DAY DEPOSITED, AND IT IS FURTHER MUTUALLY AGREED, THAT THE SIGNATURE OF THE DEPOSITOR HERETO ATTACHED IS TO BE RECOGNIZED BY THE BANK IN PAYMENT OF FUNDS OR IN THE TRANSACTION OF ANY BUSINESS FOR THIS ACCOUNT.

THE BANK IS AUTHORIZED TO MAKE A CHARGE FOR SERVICES IF, ON ANALYSIS, THE ACCOUNT DOES NOT COVER THE COST OF HANDLING AND TO CHARGE FOR CHECKS RETURNED WHEN FUNDS ARE NOT AVAILABLE. THE BANK IS ALSO DIRECTED TO MAIL MONTHLY STATEMENTS OF THIS ACCOUNT TOGETHER WITH CANCELLED VOUCHERS BY ORDINARY MAIL TO US AT THE ADDRESS GIVEN BELOW, AND THE BANK IS HEREBY RELEASED OF ANY LIABILITY BECAUSE OF THE NON-RECEIPT OF SUCH STATEMENT.

John Case

ADDRESS 154 West 38th Street, NYC PHONE LOn-3688

INTRODUCED BY JWM OPENED BY INITIAL DEPOSIT $985.00

BUSINESS buyer of piece goods DATE 6/20/49

THE PENNSYLVANIA EXCHANGE BANK

FORM 15

Government Exhibit 1A

Redemption Form dated December 29, 1949.

(OFFSET)

Government Exhibit 2A

Redemption Form dated January 9, 1950.

(OFFSET)

[*For convenience of Court and Counsel these Exhibits are bound in on the opposite page.*]

Government Exhibit 1A

(p. 7a)

REDEMPTION FORM
U. S. SAVINGS BONDS

DEC 29 19[illegible] 194[illegible]

Received from THE [illegible] 3[illegible]
(Name of Bank)

$ 540 in full payment for United States Savings Bond(s) listed below and detailed on the reverse side.
BANK TELLER WILL FILL IN AMOUNT

Please make payment by Cash ☐ Check ☐ Credit my Account ☐

_____	$ 10. Bond(s)
_____	$ 25. Bond(s)
_____	$ 50. Bond(s)
_____	$ 100. Bond(s)
_____	$ 200. Bond(s)
_____	$ 500. Bond(s)
_____	$1000. Bond(s)
_____	No. of Items (Bonds)

Kath. Quirnbach
(Print Name)

(Write Signature)

(Address)

(Identification)

→ FILL IN ON REVERSE SIDE BOND NUMBERS. MATURITY VALUE. AND DATE OF ISSUE. ←

STEWART, WARREN & BENSON CORP. N. Y. FORM 6

Government Exhibit 2A

REDEMPTION FORM
U. S. SAVINGS BONDS

Miller

JAN - 1956 194

Received from _____
(Name of Bank)

$ 1018 in full payment for United States Savings Bond(s) listed below and detailed on the reverse side.
BANK TELLER WILL FILL IN AMOUNT

Please make payment by Cash ☐ Check ☐ Credit my Account ☐

_____ $ 10. Bond(s)
_____ $ 25. Bond(s)
_____ $ 50. Bond(s)
_____ $ 100. Bond(s)
_____ $ 200. Bond(s)
_____ $ 500. Bond(s)
_____ $1000. Bond(s)
_____ No. of Items (Bonds)

_____
(Print Name)

Kat Chernak
(Write Signature)

_____
(Address)

_____
(Identification)

→ FILL IN ON REVERSE SIDE BOND NUMBERS. MATURITY VALUE. AND DATE OF ISSUE. ←

STEWART, WARREN & BENSON CORP. N. Y. FORM 6

Government Exhibit 3A

Redemption Form dated January 19, 1950.

(OFFSET)

Government Exhibit 4A

Redemption Form dated January 30, 1950.

(OFFSET)

[*For convenience of Court and Counsel these Exhibits are bound in on the opposite page.*]

Government Exhibit 3A

(p. 9a)

REDEMPTION FORM
U. S. SAVINGS BONDS

JAN 19 1953 , 194

$1032- *Received from* _____
(Name of Bank)

$ 1046 in full payment for United States Savings Bond(s) listed below and detailed on the reverse side.
BANK TELLER WILL FILL IN AMOUNT

Please make payment by Cash ☑ Check ☐ Credit my Account ☐

	$ 10. Bond(s)
	$ 25. Bond(s)
6	$ 50. Bond(s)
4	$ 100. Bond(s)
	$ 200. Bond(s)
1	$ 500. Bond(s)
	$1000. Bond(s)
	No. of Items (Bonds)

Nat Chernoff
(Print Name)

Nat Chernoff
(Write Signature)

(Address)

(Identification)

→ FILL IN ON REVERSE SIDE BOND NUMBERS, MATURITY VALUE, AND DATE OF ISSUE. ←

STEWART, WARREN & BENSON CORP. N. Y. FORM 6

Government Exhibit 4A

REDEMPTION FORM
U. S. SAVINGS BONDS

_____ 194____

Received from _____
(Name of Bank)

$ 917 in full payment for United States Savings Bond(s) listed below and detailed on the reverse side.
BANK TELLER WILL FILL IN AMOUNT

Please make payment by Cash ☑ Check ☐ Credit my Account ☐

_____ $ 10. Bond(s)	Nat Cherkoff
_____ $ 25. Bond(s)	(Print Name)
_____ $ 50. Bond(s)	Nat Cherkoff
_____ $ 100. Bond(s)	(Write Signature)
_____ $ 200. Bond(s)	
_____ $ 500. Bond(s)	(Address)
_____ $1000. Bond(s)	
_____ No. of Items (Bonds)	(Identification)

→ FILL IN ON REVERSE SIDE BOND NUMBERS. MATURITY VALUE. AND DATE OF ISSUE. ←

STEWART, WARREN & BENSON CORP. N. Y. FORM 6

Government Exhibit 5A

Redemption Form dated February 6, 1950.

(OFFSET)

Government Exhibit 6A

Redemption Form dated February 9, 1950.

(OFFSET)

[*For convenience of Court and Counsel these Exhibits are bound in on the opposite page.*]

Government Exhibit 5A

(p. 11a)

REDEMPTION FORM
U. S. SAVINGS BONDS

THE PENNSYLVANIA EXCHANGE BANK 194
20 WEST 48TH ST.
NEW YORK 19, N.Y. FEB 6 1960

Received from _____
(Name of Bank)

$ 450 in full payment for United States Savings Bond(s) listed below and detailed on the reverse side.
BANK TELLER WILL FILL IN AMOUNT

Please make payment by Cash ☐ Check ☐ Credit my Account ☐

_____ $ 10. Bond(s)
_____ $ 25. Bond(s)
_____ $ 50. Bond(s)
_____ $ 100. Bond(s)
_____ $ 200. Bond(s)
_____ $ 500. Bond(s)
_____ $1000. Bond(s)
_____ No. of Items (Bonds)

_____
(Print Name)

Grat Chernoff
(Write Signature)

_____
(Address)

THOMAS YOUNG
(Identification)

→ FILL IN ON REVERSE SIDE BOND NUMBERS, MATURITY VALUE, AND DATE OF ISSUE. ←

STEWART, WARREN & BENSON CORP. N. Y. FORM 6

Government Exhibit 6A

REDEMPTION FORM
U. S. SAVINGS BONDS

Feb 3 1941

Received from _____
(Name of Bank)

$ 716 in full payment for United States Savings Bond(s) listed below and detailed on the reverse side.
BANK TELLER WILL FILL IN AMOUNT

Please make payment by Cash ☑ Check ☐ Credit my Account ☐

_____ $ 10. Bond(s)	Nat. Chernoff
_____ $ 25. Bond(s)	(Print Name)
_____ $ 50. Bond(s)	Nat Chernoff
_____ $ 100. Bond(s)	(Write Signature)
_____ $ 200. Bond(s)	
_____ $ 500. Bond(s)	(Address)
_____ $1000. Bond(s)	THOMAS YOUNG
_____ No. of Items (Bonds)	(Identification)

→ FILL IN ON REVERSE SIDE BOND NUMBERS. MATURITY VALUE. AND DATE OF ISSUE. ←

STEWART, WARREN & BENSON CORP. N. Y. FORM 6

Government Exhibit 7A

Redemption Form dated February 15, 1950.

(OFFSET)

Government Exhibit 8A

Redemption Form dated February 16, 1950.

(OFFSET)

[*For convenience of Court and Counsel these Exhibits are bound in on the opposite page.*]

Government Exhibit 7A

(p. 13a)

REDEMPTION FORM
U. S. SAVINGS BONDS

T.L.B 1-

THE PENNSYLVANIA EXCHANGE BANK 19____
20 WEST 48TH ST.
NEW YORK (Name of Bank)

Received from

$ 897.50
BANK TELLER WILL FILL IN AMOUNT

in full payment for United States Savings Bond(s) listed below and detailed on the reverse side.

Please make payment by Cash ☒ Check ☐ Credit my Account ☐

____	$ 10. Bond(s)
____	$ 25. Bond(s)
____	$ 50. Bond(s)
____	$ 100. Bond(s)
____	$ 200. Bond(s)
____	$ 500. Bond(s)
____	$1000. Bond(s)
____	No. of Items (Bonds)

Blanche Sherroff
(Print Name)

(Write Signature)

(Address)

J.M.
(Identification)

→ FILL IN ON REVERSE SIDE BOND NUMBERS, MATURITY VALUE, AND DATE OF ISSUE. ←

STEWART, WARREN & BENSON CORP. N. Y. FORM 6

Government Exhibit 8A

Government Exhibit 8A

REDEMPTION FORM
U. S. SAVINGS BONDS

THE PENNSYLVANIA EXCHANGE BANK 19___
20 WEST 48TH ST.
NEW YORK 19, N.Y.
(Name of Bank)

Received from _____

$ 84— in full payment for United States Savings Bond(s) listed bel
BANK TELLER WILL FILL IN AMOUNT
and detailed on the reverse side.

Please make payment by Cash ☐ Check ☐ Credit my Account ☐

_____ $ 10. Bond(s)
_____ $ 25. Bond(s)
_____ $ 50. Bond(s)
_____ $ 100. Bond(s)
_____ $ 200. Bond(s)
_____ $ 500. Bond(s)
_____ $1000. Bond(s)
_____ No. of Items (Bonds)

_____
(Print Name)

David Chernoff
(Write Signature)

_____
(Address)

THOMAS YOUNG
(Identification)

J.M.

→ FILL IN ON REVERSE SIDE BOND NUMBERS, MATURITY VALUE, AND DATE OF ISSUE. ←

STEWART, WARREN & BENSON CORP. N. Y. FORM 6

Government Exhibit 21

CONFIDENTIAL—FOR USE OF PAYING AGENTS ONLY

STATEMENT BY THE TREASURY DEPARTMENT CONCERNING IDENTIFICATION OF PERSONS PRESENTING UNITED STATES SAVINGS BONDS FOR PAYMENT AND THE LIABILITY OF PAYING AGENTS FOR LOSSES RESULTING FROM THE ERRONEOUS PAYMENT OF SUCH BONDS.

TREASURY DEPARTMENT
Washington, December 19, 1947

1. On and after January 1, 1948, paying agents are expected to make adequate notations on the bonds or on a separate record at the time of payment showing exactly how identification was established, except that paying agents will doubtless feel that notations are unnecessary in the case of known customers. In the absence of such notation as to a payment on and after such date (which subsequently proves to have been an erroneous payment) a statement by the paying agent that it has no reason to believe its usual identification procedure was not followed will not be considered in itself as a sufficient basis for a determination by the Secretary that the agent was free from fault or negligence in making the payment, even though its procedure as described by the agent would appear to be adequate if followed.

However, very careful consideration will be given to a statement by a paying agent that it has no reason to believe its usual identification procedure (which as described by the agent appears adequate) was not followed in an erroneous payment made before January 1, 1948, where the agent's statement is the only evidence obtainable. This, of course, will not apply to erroneous payments with respect to which reimbursement has already been

made by agents or to cases in which the Department has heretofore formally determined an agent's liability and has requested it to make reimbursement.

2. Subject to other provisions of this statement a paying agent will be relieved of liability when it has noted on the bonds (or on a separate record) at the time of payment the facts of identification if: (1) an identification practice acceptable under the circumstances is shown to have been followed; and (2) the Department's investigation and the circumstances of the case disclose no factors tending affirmatively to show that due care was not exercised. For handwriting as a factor see paragraph 3.

3. Acceptable identification includes, but is not limited to, the following:

(i) personal identification as explained in paragraph 4;

(ii) a pass issued by an employer (whose existence is known to the paying agent), bearing the photograph of the employee or an adequate identifying description, and his signature countersigned by some person purporting to be authorized by the employer, or bearing some other evidence of validation of the employee's signature, as, for example, a facsimile signature of a representative of the employer;

(iii) an insurance policy having attached a photographic copy of the application therefor showing the insured's signature, and adequate identifying description;

(iv) separation documents of Army, Navy, Marine Corps, and Coast Guard, that is, either a single

separation document or two documents in combination, which set forth a physical description and witnessed signature of the recipient, or photographs of such documents under practically the same circumstances as prescribed in the case of Armed Forces Leave Bonds (see paragraph 10 of the instructions to paying agents governing Armed Forces Leave Bonds, copies of which may be obtained from the Federal Reserve Bank of the District);

(v) original (not duplicate) draft registration cards, that is, those cards bearing the registrant's physical description signed by the registrant in the presence* of the registrar and signed also by the registrar;

(vi) a customer of the paying agent, if known to or duly identified by the employee as being a customer whose account has been established for six months or longer or a customer whose identity was required to be established beyond any reasonable doubt at the time the account was opened;** and

(vii) motor vehicle operators' licenses or permits; greater care should be exercised in accepting this type of identification, since in many states a

---

* This does not mean that paying agents are expected to ascertain that the registrant actually signed his name in the presence of the registrar. It is inserted merely to distinguish a draft registration card from a selective service classificaiton card which comes within the unacceptable class set forth in paragraph 5 and does not have to be signed by the addressee in anyone's presence and does not have to be validated by a countersignature.

** This deals with payment to a customer. See paragraph 4 for the identification of someone else by a customer.

> person can easily obtain a driver's license or permit without having to establish his identity to the agency issuing the license or permit. In any case of doubt other acceptable documents should be required for corroborative purposes.

It should be ascertained that any physical description or photograph on an identification document fits the person presenting the bond, and while paying agents' employees are not expected to be handwriting experts, that there is a reasonable similarity between the signature known to have been placed on the bond *by such person* and that appearing on the identification document and that any such documents do not bear signs of alteration. A recently issued document should be a cause for the exercise of additional care.

4. Personal identification, that is, identification of a stranger by a customer of or by someone well and favorably known to the paying agent, if carefully used, is one of the best methods of identification and has the approval of the Treasury. But, of course, personal identification is not considered good identification by the Treasury Department when a paying agent accepts the bare statement of the identifier that he knows the person presenting the bond for payment by the name inscribed on the bond. The personal integrity and reliability of the identifier are not sufficient. The reliability of the source and duration of the identifier's acquaintance with the person presenting the bond for payment are just as important. The paying agent, therefore, should ask for the source and duration of the identifier's acquaintance with the person presenting the bond and should be satisfied that they are sound. At the time of payment a paying agent should require the

Government Exhibit 21

identifier to sign his name and show his address on the bonds, or on a separate record, or should so record such data itself. A paying agent may imprint on the back of a bond for the signature of the identifier any form of guarantee which the agent may wish to use for its own protection. In the event of a loss the identifier will be expected to be in a position to present a reasonable basis for making the identification. In the absence of such reasonable basis the paying agent will be considered to have been at fault in making the payment. Consequently, the agent will have to sustain the loss unless he can obtain reimbursement from the identifier.

5. Unacceptable identification includes, but is not limited to, social security cards, ration books, selective service classification cards (that is, those notifying a person of his classification for draft purposes), and, in general, any kind of card or alleged identification which does not contain a witnessed, or otherwise validated, signature or which is easily obtainable without the person in whose name it is issued having to establish his identity. Generally, these cards will not be considered acceptable by themselves or in combinations thereof.

6. Paying agents will not be relieved of liability for losses resulting from erroneous payments in cases which involve a violation of the governing regulations and instructions. Particular attention should be given to detect alterations on bonds, and differences and errors in names and initials or lack of appropriate prefix and suffix between those in the bond inscription and those in the request for payment. Agents may be adjudged fully respsonsible for any losses resulting from any deficiencies in these respects.

Government Exhibit 20

TREASURY DEPARTMENT
Fiscal Service
Chicago 54, Ill.

(Emblem)

BUREAU OF THE PUBLIC DEBT
Chicago Office:
Merchandise Mart

Office of the
Deputy Commissioner in Charge

Jul 19 1950

Mr. J. W. Miller, President,
Pennsylvania Exchange Bank,
566 Eighth Avenue,
New York 18, N. Y.

Dear Mr. Miller: Case of: Blanche Chernoff

The Treasury has been notified of the loss or theft of the savings bonds described in the attached schedule. Since our records show that your bank paid the bonds this notice is transmitted in order:

(1) to acquaint you with the possibility of an erroneous payment having been made,

(2) that you may assemble all known information concerning the payment for presentation to the Secret Service agent who will call at your bank in connection with his investigation of the case, and

(3) that you may notify your bonding company of the matter and take such other action as you may consider desirable.

Government Exhibit 20

Photographs of bonds, one or more for each date of payment, are enclosed to assist you in Item (2) above.

This notice does not constitute a claim for reimbursement. Your bank will be informed of the result of the Department's investigation. In any correspondence with respect to this notice, please refer to the name of the case as indicated above.

Very truly yours,

CHAS. D. PEYTON
Chas. D. Peyton
Deputy Commissioner in Charge

Government Exhibit 20A

BUREAU OF THE PUBLIC DEBT
Chicago Office

SCHEDULE OF PAID BONDS UNDER INVESTIGATION

Case of Nat Chernoff (N. Y.)
(Blanche Chernoff)

	Serial Number	Issue Date	Paying Agent	Date Paid	Amount Paid
•	M-5,790,889-E	9-43	The Pennsylvania	12-29-49	$840.00
•	C-12,890,736-E	5-42	Exchange Bank,	1- 9-50	90.00
	C-30,781,495-E	3-43	New York City, N. Y.	"	86.00
	C-34,217,230-E	4-43		"	86.00
	C-43,130,920-E	9-43		"	84.00
	C-43,130,921-E	9-43		"	84.00
	C-43,130,922-E	9-43		"	84.00
	C-43,130,923-E	9-43		"	84.00
	D-6,172,520-E	9-43		"	420.00
•	C-12,890,725-E	5-42		1-19-50	90.00
	L-9,095,688-E	6-42		"	45.00
	C-12,890,756-E	6-42		"	90.00
	L-14,775,934-E	8-42		"	44.00
	L-19,864,332-E	10-42		"	44.00
	L-29,937,897-E	1-43		"	44.00
	L-33,538,201-E	3-43		"	43.00
	C-30,781,496-E	3-43		"	86.00
	L-49,641,381-E	8-43		"	42.00
	C-43,130,918-E	9-43		"	84.00
	D-7,781,727-E	1-44		"	420.00
•	D-6,916,070-E	9-43		1-30-50	420.00
	C-72,516-823-E	1-44		"	84.00
	C-70,598,680-E	2-44		"	83.00
	C-74,209,896-E	2-44		"	83.00
	C-74,209,897-E	2-44		"	83.00
	C-74,209,899-E	2-44		"	83.00
	C-108,672,653-E	5-45		"	81.00
•	D-6,916,065-E	9-43		2- 6-50	420.00
	C-120,135,721-E	11-45		"	80.00
	C-120,698,900-E	11-45		"	80.00

Government Exhibit 20B

BUREAU OF THE PUBLIC DEBT
Chicago Office

SCHEDULE OF PAID BONDS UNDER INVESTIGATION

Case of Nat Chernoff (N. Y.)
(Blanche Chernoff)

	Serial Number	Issue Date	Paying Agent	Date Paid	Amount Paid
	C-120,698,905-E	11-45	The Pennsylvania	2- 6-50	$80.00
	C-120,698,908-E	11-45	Exchange Bank	"	80.00
	C-120,698,909-E	11-45	New York City, N. Y.	"	80.00
	C-120,698,910-E	11-45		"	80.00
	C-120,698,911-E	11-45		"	80.00
•	L-8,224,373-E	5-42		2- 9-50	45.00
	Q-75,459,540-E	1-43		"	22.00
	D-4,730,989-E	4-43		"	430.00
	Q-238,607,825-E	8-43		"	21.50
•	C-56,341,718-E	1-44		"	84.00
	C-74,209,898-E	2-44		"	84.00
	C-74,209,900-E	2-44		"	84.00
	C-74,209,901-E	2-44		"	84.00
	Q-445,223,197-E	9-44		"	20.50
	Q-445,223,242-E	9-44		"	20.50
	Q-445,223,243-E	9-44		"	20.50
•	L-14,533,100-E	7-42		2-15-50	45.00
	C-42,075,514-E	8-43		"	86.00
	C-42,075,515-E	8-43		"	86.00
	C-56,341,716-E	1-44		"	84.00
•	C-74,209,902-E	2-44		"	84.00
•	C-74,209,903-E	2-44		"	84.00
•	C-74,209,904-E	2-44		"	84.00
•	C-74,209,905-E	2-44		"	84.00
	Q-445,223,198-E	9-44		"	20.50
	C-120,698,899-E	11-45		"	80.00
	C-120,698,906-E	11-45		"	80.00
	C-120,698,907-E	11-45		"	80.00
•	C-51,746,028-E	10-43		2-20-50	84.00

Defendant's Exhibit AV

TREASURY DEPARTMENT
(Emblem) Fiscal Service
Washington 25

Nov 16 1951

Mr. J. W. Miller, President,
Pennsylvania Exchange Bank,
566 Eighth Avenue,
New York 18, N. Y.

Dear Mr. Miller:

I refer to Department letter dated July 19, 1950, regarding the payment by your bank in December 1949, January and February 1950, of fifty-nine savings bonds bearing the names of various members of the Nat Chernoff family, at the total redemption value of $6,684.50.

The investigation conducted by the Department disclosed that: (1) the bonds were stolen and the requests for payment forged by an impostor whose identity has not been established; (2) payment of the bonds was made to one Irving Mishel, who was well known to you; (3) trials of Mishel on various charges are pending in New York courts; and (4) the probability of obtaining any restitution is extremely remote. Photographs of the affidavits of forgery signed by the registered owners are enclosed for your examination.

The payment of a bond to a person known to be other than a person named on the bond is in direct violation of the regulations governing the payment of savings bonds, as set forth in Section 321.7 of Department Cir-

Defendant's Exhibit AV

cular No. 750, Revised, which restricts payment to the registered owner or coowner named on the bond.

Under the circumstances, a basis has not been established upon which your bank may be granted relief from liability for the loss resulting from the erroneous payment. I should appreciate your forwarding a check or draft in the amount of $6,684.50, drawn to the order of the Treasurer of the United States, to the *Chicago Office, Bureau of the Public Debt, Merchandise Mart, Chicago 54, Illinois.*

Very truly yours,

E. F. BARTELT
E. F. Bartelt
Fiscal Assistant Secretary

Government Exhibit 22

(Emblem)

THE PENNSYLVANIA EXCHANGE BANK
20 West 48th Street Opposite Rockefeller Plaza
New York 19, N. Y.

JAMES W. MILLER
President

38th Street Office
8th Avenue at 38th Street
New York 18, N. Y.

December 26, 1951

Mr. E. F. Bartelt
Fiscal Assistant Secretary
Treasury Department
Fiscal Service
Washington 25, D. C.

Dear Sir:

We have your letter of November 16, 1951, regarding the payment by our Bank of fifty-nine savings bonds bearing the names of various members of the Nat Chernoff family at the total redemption value of $6,684.50.

At the time the investigation was made by your Department we were informed that the bonds were properly cashed in accordance with procedure laid down in your official circular and consequently no claim would be made against us. We note the several matters listed in the second paragraph of your letter as being disclosed by your investigation, but call your attention to the fact that item (2) is incorrect according to the information that we have and which was given to and confirmed by your investigators.

Government Exhibit 22

Under the circumstances we believe that we should be granted relief from liability for the loss resulting from the erroneous payment.

Very truly yours,

JAMES W. MILLER
James W. Miller
President

Defendant's Exhibit AL

TREASURY DEPARTMENT
(Emblem) Fiscal Service
Washington 25

Feb 5 1952

Mr. James W. Miller,
The Pennsylvania Exchange Bank,
20 West 48th Street,
Opposite Rockefeller Plaza,
New York 19, New York.

Dear Mr. Miller:

This is in reply to your letter dated December 26, 1951, regarding the payment by your bank of savings bonds bearing the names of various members of the Nat Chernoff family, at the total redemption value of $6,684.50.

A careful review of the case has been made and full consideration given to the comments in your letter. We are not aware of the information given by our investigating agent to you or officials of your bank. However, I wish to point out that the statute under which relief may be granted requires the Secretary of the Treasury

Defendant's Exhibit AL

to determine that the loss resulted without fault or negligence of the paying agent. The circumstances in this case do not justify such a determination.

The investigation established conclusively that these bonds were paid by tellers of your bank upon instructions from you; that the proceeds of the bonds were handed by the tellers to the bank guard who delivered them to you; and that in at least two instances you personally handed the money to Mr. Mishel. As to the circumstances surrounding these payments, you stated to our investigating agent that Mr. Mishel brought with him another man who remained at a distance, that you did not meet or observe this individual, and did not attempt to identify him as the registered owner of the bonds Mr. Mishel handed you and asked to have paid. Neither your statement nor the investigation generally disclosed that any attempt was made at any time to identify any one connected with the payment of these bonds as the registered owners or coowners. I wish to make it clear that payment in this manner is not in accordance with procedure laid down in Department Circulars and memoranda of instructions and letters to paying agents, but is clearly a violation of all regulations governing the payment of savings bonds.

Accordingly, there is no basis for granting your bank relief from its liability for the loss in this case. Therefore, I must ask that reimbursement in the amount of $6,684.50 be made as previously requested.

Very truly yours,

E. F. BARTELT
E. F. Bartelt
Fiscal Assistant Secretary

Defendant's Exhibit AK

TREASURY DEPARTMENT
Fiscal Service
Chicago 54, Ill.

(Emblem)

BUREAU OF THE PUBLIC DEBT
Chicago Office:
Merchandise Mart

Office of the
Deputy Commissioner in Charge

Mar 11 1952

Mr. James W. Miller,
The Pennsylvania Exchange Bank,
20 West 48th Street,
Opposite Rockefeller Plaza,
New York 19, New York.

Dear Mr. Miller:

We have written several letters requesting reimbursement on account of the erroneous redemption of United States Savings Bonds bearing the names of various members of the Nat Chernoff family, in the amount of $6,684.50.

The appeal you made from the original decision was reviewed by a special Committee, but no new evidence was submitted which would serve as a basis for the Government to grant relief to your bank.

We would appreciate your forwarding reimbursement to the Division of Loans and Currency, Merchandise Mart, Chicago 54, Illinois.

Very truly yours,

CHAS. D. PEYTON
Chas. D. Peyton
Deputy Commissioner in Charge

Government Exhibit 23

(Emblem)

THE PENNSYLVANIA EXCHANGE BANK
20 West 48th Street, Opposite Rockefeller Plaza
New York 19, N. Y.

38th Street Office
8th Avenue at 38th Street
New York 18, N. Y.

April 4, 1952

Treasury Department
Fiscal Service
Chicago 54, Illinois

Attention: Mr. Chas. D. Peyton
Deputy Commissioner in Charge

Gentlemen:

We have your letter of March 11th requesting reimbursement on account of alleged erroneous redemption of United States savings bonds bearing the names of various members of the Nat Chernoff family in the amount of $6,684.50. Reply has been delayed because of the overlapping absences of our attorney and the writer.

We regret that you are insisting on reimbursement because we feel that these bonds were cashed in good faith and within the meaning, letter and spirit of Paragraph 4 of the Treasury Department's Circular covering such redemptions dated December 19, 1947. When you originally called this matter to our attention we notified our bonding company, but subsequently informed them that the investigation made by your Department indicated that the bonds were properly cashed in accordance with the

Government Exhibit 23

procedure laid down in your official circular as advised in our letter to you dated December 26, 1951.

We are again filing claim under our Banker's Blanket Bond and will make reimbursement as soon as this matter is processed by the bonding company.

Very truly yours,

JAMES W. MILLER
James W. Miller
President

Government Exhibit 27

INTER-OFFICE COMMUNICATION

THE PENNSYLVANIA EXCHANGE BANK
20 West 48th St., Opposite Rockefeller Plaza
New York 19, N. Y.

To: Mr. I. Alfred Levy

From: Mr. James W. Miller

Subject: Nat Chernoff

Date May 13, 1952

Again referring to the matter of the Treasury Department's demand for reimbursement in connection with our having been swindled into cashing some "E" Bonds for a phony Nat Chernoff, who was brought into the Bank, introduced and identified by our depositor, Irving Mishel, I think it would be better for you to take this matter up with the Treasury Department in an endeavor to make an adjustment.

Government Exhibit 27

I have had this matter up with them many times and my approach is apparently worn out. You would probably handle it entirely different from me and, inasmuch as I am so burned up over the Treasury's attitude, I suppose I am unable to appraise the situation properly.

I am sending you our file and if there is any additional information you want before proceeding, please let me know.

J. W. MILLER
James W. Miller

Government Exhibit 28

INTER-OFFICE COMMUNICATION

THE PENNSYLVANIA EXCHANGE BANK
20 West 48th St., Opposite Rockefeller Plaza
New York 19, N. Y.

To: Mr. I. Alfred Levy

From: Mr. James W. Miller

Subject: Nat Chernoff Family

Date May 21, 1952

Referring further to our memo forwarding Chernoff file to you, please note the attached copy of letter we have just received from the Treasury Department under date of May 20, 1952.

Will you please give this matter your immediate attention so that some kind of communication can be sent to Mr. Bartelt. We are not answering this letter but will

Government Exhibit 28

expect that you will take the matter up with the Treasury Department direct in an endeavor to make a settlement as suggested by us previously.

J. W. M.

Att.

Government Exhibit 28A

COPY

TREASURY DEPARTMENT
Fiscal Service
Washington 25, D. C.

May 20, 1952

Dear Mr. Miller:

Mr. Heffelfinger, my Assistant, discussed with you on April 14th the Treasury's claim against your Bank in the amount of $6,684.50 on account of the erroneous payment of certain United States Savings bonds in the names of various persons of the Nat Chernoff family. Mr. Heffelfinger has reported that he explained to you the Treasury's position in this case at great length and informed you of our desire to close this claim which has been pending for sometime.

I understand you informed Mr. Heffelfinger that you had an appointment on April 15th to discuss this case with a representative of your bonding company and you expected that a check in settlement of the matter would be forwarded to the Treasury shortly thereafter.

Government Exhibit 28A

Since payment of the claim has not been received by the Treasury as of this date, I want to confirm the information conveyed to you with respect to the desire of the Treasury for an early settlement of the case and to state we will be required to take positive action in the matter without further delay.

Your cooperation will be appreciated.

Very truly yours,

/s/ E. F. BARTELT
E. F. Bartelt
Fiscal Assistant Secretary

Mr. James W. Miller
President

The Pennsylvania Exchange Bank
20 West 48th Street
New York 18, N. Y.

Government Exhibit 29

COPY

DORFF & LEVY
8 West 40th Street
New York 18, N. Y.

June 4, 1952.

Mr. E. F. Bartelt, Fiscal Assistant Secretary,
Treasury Department, Fiscal Service,
Washington, D. C.

Dear Sir:—

Our client, The Pennsylvania Exchange Bank of New York City has turned over to us its file regarding the cashing of certain U. S. Savings Bonds bearing the names of various members of the Nat Chernoff family at the total redemption value of $6684.50. We have read this file very carefully and we also interviewed Mr. Miller, the president of the bank. We also note from the file that this matter has been reviewed by you. We are wondering whether or not all of the facts in the matter have been presented to you because, from the facts as we learned them, and applying Paragraph 4 of the Treasury Department circular of December 19, 1947 outlining the procedure for cashing E bonds, we find it difficult to dedrct the basis of your claim for reimbursement.

We have been advised that a person came into the bank with a depositor of the bank, one Irving Mishel. This person signed the bonds in the presence of a teller of the bank and asked the teller to redeem the bonds. The teller asked for identification and Mr. Mishel, who was with that person, told the teller that Mr. Miller knew Mishel and that he was identifying the person as the payee named

Government Exhibit 29

in the bonds. Mr. Mishel and the person with the bonds went over to Mr. Miller and the latter asked Mr. Mishel who the person was; Mr. Mishel introduced that person to Mr. Miller as Mr. Chernoff, the man in whose name the bonds were registered.

We want to bring to your attention at this time that in view of the fact that Mr. Mishel had been a depositor of the bank for upwards of four years and that his transactions up to that time had been satisfactory to the bank and that Mr. Miller accepted, and had a right to accept, the identification of the person who claimed he was Mr. Chernoff, that such identification satisfied completely the requirements laid down by the Treasury Department for the cashing of these bonds. It seems to us that no better identification could be made than having somebody who is well known to the Bank officer identify the person as the one named in the bonds. Such identification, in our opinion, is superior to identification based on automobile registration, license, credit cards and other methods of identification of the same type.

We therefore respectfully ask you to have the matter reconsidered and if you deem it advisable to investigate further, we would welcome same and cooperate with you to the fullest extent. Incidentally, Mr. Miller testified before the Grand Jury regarding the theft of these bonds and identified the person who cashed the bonds as the one who claimed he was Mr. Chernoff and who was introduced to Mr. Miller as Mr. Chernoff by Mr. Mishel.

Anticipating your cooperation and hoping to hear from you as to what further action you deem necessary, we are

Very truly yours,

IAL:ftm

Government Exhibit 29A

MEMORANDUM

DORFF AND LEVY
Counselors at Law
8 West 40th Street, New York 18, N. Y.
LOngacre 5-6864

To: Mr. James W. Miller, The Pennsylvania Exchange Bank.

From: I. Alfred Levy

Subject: Nat Chernoff

Date June 4/52.

Enclosed is draft of proposed letter to be written by us to Mr. E. F. Bartelt, Fiscal Assistant Secretary.
Please let us know whether it is satisfactory.

MD

IAL:ftm
Encl.

Government Exhibit 30

Page 2 of letter of June 4, 1952.

(OFFSET)

[For convenience of Court and Counsel this Exhibit is bound in on the opposite page.]

Government Exhibit 30

(p. 37a)

We therefore respectfully ask you to have the matter reconsidered and if you deem it advisable to investigate further, we would welcome same and cooperate with you to the fullest extent. Incidentally, Mr. Miller testified before the Grand Jury regarding the theft of these bonds and identified the person who cashed the bonds as the one who claimed he was Mr. Chernoff and who was introduced to Mr. Miller as Mr. Chernoff by Mr. Mishell and who had

Anticipating your cooperation and hoping to hear from you as to what further action you deem necessary, we are

Very truly yours,

IAL:ftm

been informed that the person who cashed the b.
was subsequently indicted.

Government Exhibit 31

Mr. E. F. Bartelt,
Fiscal Assistant Secretary.

June 4, 1952

We therefore respectfully ask you to have the matter reconsidered and if you deem it advisable to investigate further, we would welcome same and cooperate with you to the fullest extent. Incidentally, Mr. Miller testified before the Grand Jury regarding the theft of these bonds and we have been informed that the person who cashed the bonds was subsequently indicted.

Anticipating your cooperation and hoping to hear from you as to what further action you deem necessary, we are

Very truly yours,

IAL:ftm

Government Exhibit 31A

MEMORANDUM

DORFF AND LEVY
Counselors at Law
8 West 40th Street, New York 18, N. Y.
LOngacre 5-6864

To: Mr. James W. Miller, The Pennsylvania Exchange Bank.

From: Max Dorff.

Subject: Nat Chernoff.

Date June 5/52.

As per our conversation, we enclose rewritten page 2 of the letter to E. F. Bartelt.

M D

MD:ftm
Encl.

Government Exhibit 24

DORFF AND LEVY
Counselors at Law
8 West 40th Street
New York 18, N. Y.
LOngacre 5–6864

June 4, 1952.

Cable Address
"LEVDORF"

Mr. E. F. Bartelt, Fiscal Assistant Secretary,
Treasury Department, Fiscal Service,
Washington, D. C.

Dear Sir:

Our client, The Pennsylvania Exchange Bank of New York City has turned over to us its file regarding the cashing of certain U. S. Savings Bonds bearing the names of various members of the Nat Chernoff family at the total redemption value of $6684.50. We have read this file very carefully and we have also interviewed Mr. Miller, the president of the bank. We also note from the file that this matter has been reviewed by you. We are wondering whether or not all of the facts in the matter have been presented to you because, from the facts as we learned them, and applying Paragraph 4 of the Treasury Department circular of December 19, 1947 outlining the procedure for cashing E bonds, we find it difficult to deduct the basis of your claim for reimbursement.

We have been advised that a person came into the bank with a depositor of the bank, one Irving Mishel. This person signed the bonds in the presence of a teller of the bank and asked the teller to redeem the bonds. The teller asked for identification and Mr. Mishel, who was with that person, told the teller that Mr. Miller knew

Government Exhibit 24

Mishel and that he was identifying the person as the payee named in the bonds. Mr. Mishel and the person with the bonds went over to Mr. Miller and the latter asked Mr. Mishel who the person was; Mr. Mishel introduced that person to Mr. Miller as Mr. Chernoff, the man in whose name the bonds were registered.

We want to bring to your attention at this time that in view of the fact that Mr. Mishel had been a depositor of the bank for upwards of four years and that his transactions up to that time had been satisfactory to the bank and that Mr. Miller accepted, and had a right to accept, the identification of the person who claimed he was Mr. Chernoff, that such identification satisfied completely the requirements laid down by the Treasury Department for the cashing of these bonds. It seems to us that no better identification could be made than having somebody who is well known to the Bank officer identify the person as the one named in the bonds. Such identification, in our opinion, is superior to identification based on automobile registration, license, credit cards and other methods of identification of the same type.

We therefore respectfully ask you to have the matter reconsidered and if you deem it advisable to investigate further, we would welcome same and cooperate with you to the fullest extent. Incidentally, Mr. Miller testified before the Grand Jury regarding the theft of these bonds and we have been informed that the person who cashed the bonds was subsequently indicted.

Anticipating your cooperation and hoping to hear from you as to what further action you deem necessary, we are

Very truly yours,

DORFF AND LEVY

IAL:ftm

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SUPREME COURT, U.S.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1957

No. 581

JAMES W. MILLER,

Petitioner,

—against—

UNITED STATES OF AMERICA,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

N. LEVAN HAVER,
Attorney for Petitioner,
41 Pearl Street,
Kingston, N. Y.
Telephone: FEderal 1-0062

THE COURT PRESS, 130 Cedar Street, N. Y. C.

INDEX

PAGE

Opinions Below 1

Grounds on Which Jurisdiction Is Based 2

Questions Presented for Review 2

The Public Interest in the Questions Involved 3

The Statute Involved 5

Statement of the Case 6

Basis for Federal Jurisdiction in the District Court .. 25

Argument Amplifying the Reasons Relied on for the Writ 25

QUESTION ONE—Under the rule of the recently decided *Jencks* case (*Jencks* v. *United States*, 353 U. S. 657) was it reversible error for the courts below to (1) deny the defendant the right to examine a prior inconsistent statement of the government's principal witness Mishel and (2) to foreclose defense counsel from making any use of another (and concededly contradictory) statement of the same witness which was not made available to the defendant until after the witness left the stand and (3) to also refuse to make available to defense counsel one of two prior reports made by another government witness (a Secret Service Agent) on the subject matter of his testimony? 25

PAGE

QUESTION TWO—Does the statute (18 U. S. C. §1001) upon which the indictment was based make it a crime for a person, in this case a bank president, to write a letter to a government agency which merely recites his (the writer's) interpretation of conclusions reached by government investigators who had interrogated the writer with respect to the procedures followed by the bank in cashing certain government bonds, or does the statute only make criminal a willfully false and fraudulent statement of a material fact, as distinguished from mere opinion? 30

QUESTION THREE—Was it reversible error for the trial court to permit (and the Court of Appeals to approve) an extensive and highly prejudicial cross-examination of the defendant as to various (but unproved) collateral matters implying moral turpitude, the mere inquires as to which, despite defendant's denials, suggested to the jury that the defendant was a man of bad moral character and unworthy of belief, or should the cross-examination have been restricted, in accordance with the prevailing rule in all the Federal circuits, to those collateral matters which involve a conviction for felony, or for such misdemeanors as embraced moral turpitude? 32

Conclusion 39

Appendix:

Opinion of the Court of Appeals Denying the Petition for a Rehearing .....App. 1

Opinion of the Court of Appeals Affirming the Judgment of the District Court .....App. 6

Judgment of the Court of Appeals .....App. 15

Table of Cases Cited

PAGE

Campion v. *Brooks Transp. Co.*, 135 Fed. 2nd 652 (U. S. C. A. Dist. of C., Vinson, J.) (4th Cir. 1943) 38

Ellis v. *District of Columbia*, 45 App. D. C. 384 37

Escheat v. *United States*, 188 Fed. 2nd 336 (8th Cir. 1951) 38

Gidion v. *U. S.*, 52 Fed. 2nd 427 37

Glover v. *United States*, 147 Fed. 426 (8th Cir. 1906) 38

Henderson v. *United States*, 202 Fed. 2nd 400 (6th Cir. 1953) 38

Ingram v. *United States*, 106 Fed. 2nd 683 (9th Cir. 1939) 39

Jencks v. *United States*, 353 U. S. 657 ....2, 3, 25, 26, 28, 29

Lennon v. *United States*, 20 Fed. 2nd 490 (8th Cir. 1927) 38

Pearson v. *United States*, 192 Fed. 2nd 681 (6th Cir. 1951) 38

Pittman v. *United States*, 42 Fed. 2nd 793 (8th Cir. 1930) 38

Provo v. *United States*, 215 Fed. 2nd 531 (2nd Cir. 1954) 5, 37, 38

Ross v. *United States*, 93 Fed. 2nd 950 (7th Cir. 1937) 38

Scaffidi v. *United States*, 37 Fed. 2nd 203 (1st Cir. 1930) 38

Simon v. *United States*, 123 Fed. 2nd 80 (4th Cir. 1941), cert. denied, 314 U. S. 694 38

United States v. *Antonelli Fireworks*, 159 Fed. 2nd 631 (2nd Cir. 1946) 36

PAGE

United States v. *Grayson*, 166 Fed. 2nd 863 34

United States v. *Klass*, 166 Fed. 2nd 373 (3rd Cir. 1947) 38

United States v. *Schiller*, 187 Fed. 2nd 572 (2nd Cir. 1951) 37

Westwater v. *Lyons*, 193 Fed. 817 (3rd Cir. 1912) 38

OTHER AUTHORITIES CITED

Laws of New York 1934, Chapter 428, as last amended by Chapters 369 and 536 of Laws of New York of 1953 9

New York Alcoholic Beverage Control Law, Section 126, subdivs. 2 and 4 9

18 U. S. C.:

Section 1001 ..... 2, 5, 6, 25, 30
Section 1254 2
Section 1621 30
Section 3231 25

Wigmore on Evidence, Third Edition, § 983, p. 551 ... 35

Wigmore on Evidence, § 983(4), p. 987 37

8 Wigmore § 2277(4) 37

IN THE

Supreme Court of the United States

OCTOBER TERM, 1957

No.

JAMES W. MILLER,

Petitioner,

—against—

UNITED STATES OF AMERICA,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

To the Honorable the Chief Justice and the Associate Justices of the Supreme Court of the United States:

Petitioner respectfully petitions this Honorable Court for a Writ of Certiorari to review a judgment and opinion of the Court of Appeals for the Second Circuit rendered in this cause on July 10, 1957 affirming a judgment of the United States District Court for the Southern District of New York entered on November 30, 1956, and the order and opinion dated October 1, 1957 denying the petition for re-hearing duly filed on July 24, 1957.

Opinions Below

The opinion of the Court of Appeals affirming the judgment of convictions is as yet unreported but its text appears in the appendix, post, pp. App. 6-App. 14.

The opinion of the Court of Appeals denying the petition for re-hearing is likewise unreported to date but its text appears in the appendix, post, pp. App. 1-App. 5.

Grounds on Which Jurisdiction Is Based

The date of the judgment sought to be reviewed and the time of its entry is July 10, 1957. The date of the order and its entry denying the petition for a re-hearing and granting a stay for 30 days pending an application for Certiorari is October 1, 1957. The statutory provision believed to sustain the jurisdiction of this court is United States Code, Title 18, Section 1254.

Questions Presented for Review

1. Under the rule of the recently decided *Jencks* case (*Jencks* v. *United States*, 353 U. S. 657), was it reversible error for the courts below to (1) deny the defendant the right to examine a prior inconsistent statement of the government's principal witness Mishel and (2) to foreclose defense counsel from making any use of another (and concededly contradictory) statement of the same witness which was not made available to the defendant until after the witness left the stand and (3) to also refuse to make available to defense counsel one of two prior reports made by another government witness (a Secret Service Agent) on the subject matter of his testimony?

2. Does the statute (18 U. S. C. § 1001) upon which the indictment was based make it a crime for a person, in this case a bank president, to write a letter to a government agency which merely recites his (the writer's) interpretation of conclusions reached by government investigators who had interrogated the writer with respect to the procedures followed by the bank in cashing certain government bonds, or does the statute only make criminal

a wilfully false and fraudulent statement of a material fact, as distinguished from mere opinion?

3. Was it reversible error for the trial court to permit (and the Court of Appeals to approve) an extensive and highly prejudicial cross-examination of the defendant as to various (but unproved) collateral matters implying moral turpitude, the mere inquiries as to which, despite defendant's denials, suggested to the jury that the defendant was a man of bad moral character and unworthy of belief, or should the cross-examination have been restricted, in accordance with the prevailing rule in all the Federal circuits, to those collateral matters which involve a conviction for felony, or for such misdemeanors as embraced moral turpitude?

The Public Interest in the Questions Involved

There exists in this case a public interest in the three questions involved which far transcends the immediate parties.

1. With respect to the first question, which is that posed by the decision in the *Jencks* case, the courts below refused to accord to an ex-bank president the trial privileges which this court in *Jencks* v. *United States* accorded to an ex-Communist labor leader, e. g., the right to inspect prior contradictory statements of government witnesses against him and to cross-examine such witnesses with respect thereto. Our historic principle of equal justice under law was, therefore, flagrantly violated by the decision below. Whether one accused of crime be a bank president, a labor leader, or the most nefarious member of society, a due respect for "principle" would mandate that each be treated alike before the law. Every citizen of the United States, and not merely the petitioner, has a vital interest in the maintenance of the equality prin-

ciple. Only by allowing certiorari can this court correct the decision below and assure the general public that all, regardless of station in life, shall be treated equally before the law.

2. With respect to the second question, i. e., as to whether a mere statement of opinion or belief as to conclusions reached by a government agent constitutes the crime of making a wilfully false and fraudulent statement for which one may be imprisoned for five years, the general public, too, have a vital interest. In this modern age with the hordes of government agents who are constantly interviewing people in all walks of life, the general public are very vitally concerned with knowing whether, after such an interview, they act at their peril in expressing, either orally or in writing, their own mere interpretation or opinion of the interview. Few members of the public, or even of the bar, would consider that the mere expression of such an opinion, would subject one to conviction for crime and five years' imprisonment. If the right of free speech and thought, or of letter-writing, at least on the subject of interviews with government agents, is fraught with such dangers, then the general public is certainly interested in knowing it. By allowing certiorari in this case, this court can serve, by its decision, to either allay public fears, or to warn of the grave dangers implicit in expressing an opinion of interviews with government agents.

3. The third question, too, has a great public interest because, with singular unanimity, the decisions of all the Circuits (even the Second, with the exception of the instant case) have been to the effect that, in a criminal case, a defendant may only be cross-examined as to those collateral matters as to which he has been convicted for felony or misdemeanors involving moral turpitude. The instant case is the only exception. The general public is, of course, interested in whether there is to be a uni-

form federal rule on so vital a subject, or whether the Second Circuit alone is to have its own peculiar rule. Indeed, its decision in the instant case is in conflict with its own decision in an earlier case (*Provo* v. *United States*, 215 F. 2nd, 531; 2nd Cir. 1954.)

Summarized, therefore, certiorari should be granted herein because the public at large, as well as the petitioner, is equally concerned with the following matters, viz.,

1. Whether under Federal law those accused of crime shall be treated equally before the law and all given the same trial privilege of compelling the production of prior contradictory statements of government witnesses for use on the cross-examination of such witnesses;
2. Whether it is such a heinous offense for a citizen to write a letter to a government agency expressing an opinion of an interview with a government agent, that conviction of Federal crime may result therefrom;
3. Whether in all the eleven Federal Circuits but one, a person accused of crime is protected against cross-examination as to any collateral matter except conviction for felony or for misdemeanor involving moral turpitude.

The Statute Involved

18 U. S. C. Section 1001:

> "Whoever, in any matter within the jurisdiction of any department or agency of the United States knowingly and willfully falsifies, conceals or covers up by any trick, scheme, or device a material fact, or makes any false, fictitious or fraudulent statements or representations, or makes or uses any false writing

or document knowing the same to contain any false, fictitious or fraudulent statement or entry, shall be fined not more than $10,000 or imprisoned not more than five years, or both."

Statement of the Case

The defendant, James W. Miller, was President of a New York City bank known as the Pennsylvania Exchange Bank from 1947 to 1954, having served as Vice-President between 1930 and 1947 (588a, 590a). From 1920 until 1930 he had been connected with a number of other New York City banks in various capacities. (586a, 587a, 588a).

The defendant has been convicted under a three count indictment for making alleged false and fraudulent statements to the Fiscal Service of the United States Treasury Department (43a). Each count of the indictment is based upon a separate letter sent to the Fiscal Service, two of which dated December 26, 1951 and April 4, 1952, respectively, were written by the defendant himself, and the third by an attorney representing the bank (46a; Exhibit 24, 40a). Each of the letters in question related to the cashing of certain United States Savings Bonds at the bank (43a).

The three letters which formed the basis of the indictment were written in response to Treasury Department requests for reimbursement by the bank for the amount of the bonds ($6,684.00) and the purpose of the letters was to explain that the bank's position in resisting payment was the belief of its officers that Treasury regulations had been complied with in cashing the bonds (43a; Exhibit 22, 25a; Exhibit 23, 29a, and Exhibit 24, 40a). In the first letter (Exhibit 22; 25a) the defendant asked, in the final paragraph thereof, that the bank be granted relief from liability for the loss—because at the time the transaction was investigated "we [referring to the defend-

ant and other bank officials] were informed that the bonds were properly cashed" (46a)—. In the second letter (Exhibit 23; 29a) the defendant expressed his "regret" that the Treasury still insisted upon reimbursement because, as he put it, "*we feel* that these bonds were cashed in good faith" (46a), but despite his expressed regret and his "feeling" that the bonds had been properly cashed, he did, in the letter's final paragraph (30a), advise the Treasury that the bank's Bonding Company had been notified of the loss and that the Treasury would be reimbursed as soon as the claim had been processed. Obviously, there was no attempt to defraud the Treasury by either of the first two letters. In the first place, in both letters the Treasury was merely advised of the defendant's interpretation of what its investigators had told him after his interview. Clearly, the Treasury had its own investigators' reports and knew what their findings were so that it was not misled or deceived by the defendant's interpretations or opinions. And, at all events, the investigators had no authority to relieve the bank from liability, and the issue of its liability would not be resolved on the basis of what the investigator had "informed" the defendant or by what the defendant's "feelings" were as to compliance with regulations. Finally, however, any attempt to defraud by the opinions expressed in the letters is completely negatived by the assurance given in the last paragraph of the second letter (30a) to the effect that the Treasury would be reimbursed as soon as the claim for the loss was processed through the bank's bonding company; and, in fact, it (the Treasury) was actually paid in full (645a). The third letter which formed the basis of the third count of the indictment was written by the bank's attorney (46a; Exhibit 24, 40a) and contained a recital of the attorney's analysis of the file relating to the transaction and the conclusion he had reached as a result thereof that the bank was not liable for the loss (40a, 41a). At the conclusion of this letter (41a) the attorney requested the Treasury "to have the

matter reconsidered" and he suggested that the matter be investigated further. In the event the Treasury elected to re-investigate, he assured it that (41a) "we would welcome same and cooperate with you to the fullest extent." That such a letter could form the basis of a criminal charge of making wilfully false and fraudulent representations, seems most incredible. Yet it forms the sole basis of the third count and the defendant was convicted under it (even though he did not write the letter, but merely reviewed it before it was mailed).

The bonds which were cashed by the bank were registered in the names of the members of the Nat Chernoff family from whom they had (unknown to the defendant) been stolen (43a). The exact circumstances of the cashing of these bonds were as follows: Some time in December 1949 (21a) one Irving Mishel, who had been a customer of the bank and known by the defendant since 1947 (593a, 595a), came into the bank with a man whom he described as his friend and the manager of a restaurant known as Roth's Restaurant (626a, 728a). Mishel introduced the man as Mr. Chernoff (749a, 761a). Mishel stated that Chernoff had some bonds that he wanted to cash (626a, 728a). The defendant examined the bonds and asked the man who claimed to be Chernoff whether he was the true owner thereof and he answered in the affirmative (626a, 728a, 729a). On the basis of this identification by Mishel, the defendant authorized the redemption, and a teller cashed the bonds (626a, 728a-731a). The Treasury regulations provide that a bank may cash bonds for a stranger if he is identified by a bank customer (See Exhibit 21, par. 4, 17a). It subsequently developed that the stranger in the instant transaction, who was introduced by Mishel as Chernoff was, in fact, a thief and an imposter whose true name was Rosenberg. The latter, as a result of grand jury testimony given by the defendant in this case, was indicted and pleaded guilty for his part in forging the bonds involved in the transaction (68a, 761a). It also

developed that Mishel, prior to the cashing of the bonds, had procured them from one Mickey Rosenberg and one Frank Pace with full knowledge that they had been stolen from the Chernoff family (119a, 120a).

At this point, it is necessary to go into Mishel's dealings with the bank and the defendant *prior* to the cashing of the bonds in December 1949, because, it is in the light of this prior background that the cashing of the bonds must be evaluated and not on the basis of subsequently acquired knowledge by the defendant.

The defendant first met Mishel at the bank in October, 1947 at which time he was introduced as a prospective customer by an attorney named Lurie (593a, 594a). Lurie, Mishel's sponsor, had himself been a customer of the bank for two years prior to the introduction and was still a customer at the time of the trial in October 1956 (593a, 611a). At this first meeting, the defendant was advised, by both Lurie and Mishel, that the latter (Mishel) was the owner of a package liquor store (594a). At that time the bank was doing a great volume of business with package liquor stores and was anxious to expand that type of business (594a). According to the defendant, the bank's experience with liquor store financing had been very good over the years, a result which he attributed to the fact that it was "a licensed business, controlled by the state" (594a).

The important fact, to be emphasized at this point, however, is that the defendant was told at the very first meeting that Mishel was a liquor store proprietor (594a). With the defendant's knowledge of the strict provisions of the New York State Liquor Law (See New York Alcoholic Beverage Control Law, Section 126, subdivs. 2 and 4; Chapter 428 of the Laws of New York 1934, as last amended by Chapters 369 and 536 of the Laws of 1953) he had a right to assume that Mishel was of good character

and had not been convicted of crime because otherwise he would not have been given a license to operate. Long after the Chernoff bond cashing transaction it was learned that Mishel had, in fact, been convicted of assault in Bronx County, N. Y., in 1945 (19a) for which he received a suspended sentence (19a). But, Miller had no way of knowing this and had every reason to believe, because Mishel was the holder of a state liquor license, that he had an unblemished record. Mishel was not convicted of any other offense until long after the 1949 Chernoff bond transaction. In fact, his subsequent convictions were not until 1952, 1953 and 1955 (19a, 20a, 660a). Thus, as of 1947 when the defendant first met Mishel he had no reason to know, especially since Mishel was a liquor store licensee, that he had any criminal background (indeed it was quite minor in 1947). Nor was Mishel convicted of any offense between the time of his introduction to the defendant in 1947 and the bond cashing in 1949.

Within a week after the introduction, Mishel opened an account in the bank of which defendant was president (594a). The first account was opened in the name of Berkshire Wine and Liquor Company (597a) and a subsequent business account was opened in the name of Mishel Wine and Liquor Company (599a). A number of other business and personal accounts were also opened from time to time (597a-599a). Over the subsequent years credit was extended by the bank to various Mishel enterprises as well as to himself and members of his family (598a-605a).

Thus, as of December 1949, when the Chernoff bond cashing transaction occurred, the defendant had no reason to believe that Mishel was anything other than an active and reputable businessman engaged in the retail liquor store business who had been a good customer of the bank for over two years. When, therefore, Mishel came into the bank and introduced as his friend a man

whom he identified as Chernoff (626a, 728a, 729a), and the man so introduced also claimed to be Chernoff, the defendant had no reason to believe that both were liars. The Treasury Regulations (Exhibit 21, par. 4, 17a) contemplate that in a practical workaday banking world occasions will arise when a stranger to the bank will seek to cash bonds there. Recognizing the frequency of such transactions the cited rule provides that the bank may cash the bonds provided that the person seeking to cash them is identified by a customer of the bank. That Miller was duped, or may have been careless or negligent is one thing. But that he committed a crime is quite another. As a matter of hindsight, it is now quite apparent that both Mishel and the imposter Rosenberg, who posed as Chernoff, were crooks and nefarious characters of the lowest order. Indeed, they were apparently so diabolically clever that they duped other large banking institutions in New York City, as well as their officers, in the same type of transaction (203a, 206a, 234a).

The first time that the defendant Miller had any reason to question Mishel's integrity was in March 1950, a short time after the Chernoff bond transaction (656a). The incident which brought home to the defendant Mishel's dishonesty arose out of an entirely different transaction and related to a $10,000 bank loan made to one of Mishel's liquor store enterprises (656a, 657a). As of the time this loan was made in March 1950, the defendant had no reason to believe that there was anything questionable about the earlier Chernoff bond cashing transaction because he was first advised of its dubious character by the Treasury Department's letter to him dated July 19, 1950 (Exhibit 20; 19a, 20a). To get back to the March 1950 loan to the liquor store, it appears that Mishel applied for a $10,000 loan to the Mishel Wine and Liquor Company and submitted a financial statement showing his ownership of it (656a, 657a). After the loan was granted, the bank's credit department ascertained that prior to getting the

proceeds of the loan, Mishel had actually sold the liquor store (657a, 658a). Miller immediately demanded an explanation from Mishel and, the explanation being unsatisfactory, Miller demanded that the $10,000 loan be paid immediately (658a). Mishel said he was unable to pay the loan immediately but that he could furnish stock exchange securities as collateral (658a). A day or so later Mishel brought in securities exceeding in value the amount of the loan, but the securities were in the names of Frank and Sadie Alpren (658a, 659a). Miller stated that the securities were unsatisfactory as collateral unless accompanied by an hypothecation agreement authorizing Mishel to pledge them. A duly executed hypothecation agreement, purportedly executed by the owners, was subsequently delivered to the bank (659a). Some two months later, or in May 1950, Mr. Reedy, a Vice-President of the bank, reported to Mr. Miller that he had received a tip that there was some irregularity about the Alpren stock which had been pledged as security for the Mishel loan (659a, 660a). Mr. Miller directed Mr. Reedy to immediately report the matter to the District Attorney (660a) which the latter promptly did (729a-794a). It later developed that the pledged securities had been stolen and the defendant testified before the Grand Jury against Mishel which resulted in Mishel's indictment and plea of guilty (660a). Actually, at the time of the trial in this case, Mishel was under a 10 to 20 year sentence which had been meted out to him in 1952 for the crime (660a).

Thus, the defendant, Miller, was responsible for the apprehension, indictment and imprisonment of the man who, on this trial, was the government's chief witness against him (656a-661a). Four or five months later, or on October 6, 1950, Mishel was arrested by a Secret Service Agent named Sershen for his part in the Chernoff bond transaction (660a, 661a).

As previously pointed out, the first time that Miller learned that there was anything questionable about the

Chernoff bond transaction was when he received the Treasury Department's letter of July 19, 1950 (Exhibit 20; 19a, 20a). More than six months having elapsed since the transaction, which was a relatively small one for a bank of this size, involving only $6684.00 worth of bonds, Mr. Miller, as head of such a large institution, could not be expected to have any distinct recollection of it. Accordingly, and immediately upon receipt of the Treasury Department's letter of July 19, 1950, Miller turned the letter over to the bank's head teller to collect all available information surrounding the transaction (616a). The letter had stated that a Treasury agent would visit the bank (Exhibit 20; 19a; 617a), and Secret Service Agent Sershen did so on August 9, 1950 (624a). This first visit was very brief, and the defendant told Sershen that Mr. Brennan, Manager of the bank, would make all bank records available and that everybody in the bank would cooperate (624a). Concededly, this cooperation was fully given (465a). Sershen's next visit was some time before the middle of October 1950 (623a). Mishel, it will be recalled, was arrested by Sershen in connection with the Chernoff transaction on October 6, 1950 (660a, 661a) and, according to Sershen's testimony, his second visit to the bank was made on the same day, but not until after Mishel's arrest (465a-467a).

We now come to the details of this crucial second visit of Agent Sershen on October 6, 1950 and it is crucial because what transpired between Sershen and the defendant on this occasion (624a-6[illegible]) is what gave rise to the writing of the three letters upon which the whole indictment is founded (43a-47a).

The defendant Miller's version of the interview (625a-627a) is not essentially different from that of Agent Sershen (467a-468a), except in one respect. According to Miller, Sershen told him at the time, that the bank was "in the clear" because it had complied with the regulations

in obtaining identification by a bank customer of the person who cashed the bonds (626a). Sershen, on the other hand, denied that he had expressed any such conclusion and, on the contrary, claims that he told Miller "that it didn't appear to me (Sershen) that he (Miller) had used proper care in accepting those bonds for redemption" (468a).

The fallibility of human memories may account for the discrepancy in the respective recollections of the interview. At all events, whether Sershen said the bank was "in the clear" or whether he said it was negligent in the procedures that had been followed, should not make the difference between guilt and innocence of Federal crime. The bank's liability would be determined, not by what Sershen did or did not say to Miller, but rather by the Treasury Department's ultimate conclusion as to whether or not its regulations had been complied with. In other words, liability or non-liability, would be decided irrespective of any conclusions expressed to Miller on the subject by Sershen. Conceivably, Miller's version of what Sershen stated to be his opinion of the bank's liability is a correct report of what Sershen said. Nevertheless, no one can seriously contend that that opinion, if it were expressed by its minor agent, would bind, or influence, the Treasury. Nor would it be defrauded, or misled by letters written to it more than a year later in which Miller and the bank's attorneys reported Miller's version of the interview. Yet the sole basis of the indictment is the writing of such letters! Sershen made at least two reports to the Treasury of his interview (120a) and presumably he reported to it his own version. How then could the government have possibly been misled or defrauded by the letters upon which the indictment is based? Conceding, *arguendo*, that the letters contained, whether mistakenly or not, an incorrect statement of Sershen's conclusion, as expressed by him at

the interview, does it constitute a Federal crime to make such a mistake? Especially is this question apropos, where it is clear, beyond any possible doubt, that no harm could, or did, result to any government agency as a result thereof. Writing letters giving a government agency the writer's interpretation of conclusions expressed by its agent at an interview is, indeed, a very hazardous occupation, if one must run the risk of punishment for serious Federal crime for any incorrect statements in the letter and regardless of whether the government is defrauded thereby.

Following the October 1950 interview between Sershen and Miller, nothing more was heard by Miller or the bank from the Treasury Department for over a year (627a). Then, on or about November 16, 1951, the Treasury Department wrote Miller a letter (Exhibit A. V., 23a, 24a) in which it was stated that the bank's investigation had disclosed that the stolen bonds had been forged by an imposter, that the proceeds had been received by Mishel who was under various charges, and that the probability of obtaining restitution from Mishel was "extremely remote" (23a). Accordingly, demand was made that the bank pay the value of the bonds ($6,684.50) to the Treasury (24a). The long delay which had intervened between the October 1950 interview and the November 16, 1951 letter, clearly indicates (as well as does the text of the letter) that the Treasury Department had been attempting, or hoped, to recover the value of the bonds from Mishel or the imposter who had forged them, before seeking to recover from the bank. Indeed, it was not until it became clear to the Treasury that such efforts would prove unavailing that demand was made upon the bank. It was against this background that the first allegedly incriminating letter (which forms the basis of the indictment's first count) was written on December 26, 1951 (Exhibit 22; 25a, 26a). The portion

of this letter which the government claims to be false and fraudulent reads as follows (46a, 25a):

> "At the time the investigation was made by your Department *we were informed* that the bonds were properly cashed in accordance with procedure laid down in your official circular and consequently no claim would be made against us." (Emphasis added.)

A subsequent letter written by the defendant dated April 4, 1952 (Exhibit 23; 29a, 30a) forms the basis of the second count of the indictment (43a-46a; Exhibit 23; 29a, 30a). The purportedly incriminating portion of this letter reads as follows (46a):

> "We regret that you are insisting on reimbursement because *we feel* that these bonds were cashed in good faith and within the meaning, letter and spirit of Paragraph 4 of the Treasury Department in a circular covering such redemptions dated December 19, 1947." (Emphasis added.)

Although, in the letter, Miller expressed his "regret" that demand was being made for reimbursement he, nevertheless, in the final paragraph of the letter, assured the Department that it would be fully reimbursed as soon as the claim was processed through the bank's bonding company (30a). Assurance of such reimbursement, certainly negatives any intent to willfully deceive or defraud the Treasury Department. Yet the defendant was convicted of the crime of making false and fraudulent representations for writing this letter! Actually, the Treasury was, in due course, fully reimbursed for the bonds by the bank's bonding company (645a).

The final letter regarding the Chernoff bond transaction and which formed the basis of the third count of the indictment, was dated June 4, 1952 (Exhibit 24; 40a, 41a)

and was written by the bank's attorney. This letter had been examined by the defendant before it was mailed (641a-643a), and it was apparently the government's theory, that proof of such pre-view of the letter by the defendant was sufficient proof of his authorship to warrant his indictment and conviction for its contents. Actually, the letter (40a, 41a) was a most innocuous document. It explained that the attorney who wrote it had reviewed the file as to the bond cashing transaction and had interviewed the tellers and the defendant and had concluded, as a result of such review and interviews, that the bank was not liable for the loss (40a, 41a). At most it gave the attorney's conclusion as to the bank's liability and the basis for it. But the attorney did not insist upon the acceptance of his opinion. He suggested a reconsideration and re-investigation. At the conclusion of the letter, he stated that should the Treasury decide to re-investigate "we would welcome same and cooperate with you to the fullest extent". How so innocent a letter could be construed to be such a false and fraudulent representation to a government agency as to constitute a grave crime, is difficult to comprehend. Yet the defendant has been convicted of a serious crime because of it, and notwithstanding that he merely pre-viewed it.

Over two years after the last of the three letters was sent, or on December 21, 1954, the defendant was indicted under a three-count indictment, each count being based on a separate letter (1a, 3a, 4a).

In the four years which intervened between Mishel's arrest on October 6, 1950 and the time of the defendant's indictment in December 1954 (465a, 466a), Mishel had been incarcerated in various penal institutions in New York State and convicted of many crimes, State and Federal, including, but not limited to those arising out of the Chernoff bond transaction (19a, 20a, 62a, 85a, 95a,

97a, 99a). The first conviction was in connection with the Alpren securities which he had pledged with the Pennsylvania Exchange Bank (172a, 173a, 660a). Miller, the defendant here, as President of the Bank was directly responsible for Mishel's 1952 conviction on this charge (660a). This first conviction was really the beginning of Mishel's downfall because, while incarcerated in jail in connection with it, he was repeatedly interrogated by hordes of government prosecutors, agents and investigators with respect to diverse other crimes (58a, 62a, 197a, 189a, 200a, 201a, 229a) which resulted in his subsequent convictions for other crimes (19a, 20a, 62a, 85a, 95a, 97a, 99a). Thus, Mishel undoubtedly felt, and not without some reason, that Miller, who was concededly responsible for the first conviction (involving the Alpren stock), was his arch-enemy and the real cause of his downfall. It was upon this conviction that he was, at the time of the trial, serving a 10 to 20 year sentence (19a). And while in jail on this charge, Mishel was doing his utmost to bargain with District Attorneys and others handling the other charges which he faced, in an attempt to get suspended or concurrent sentences or other considerations for himself (58a, 59a, 60a, 62a, 63a, 66a, 67a, 92a) and he, in fact, succeeded in inducing one Prosecutor to arrange for a single sentence to cover a multiplicity of crimes (60a, 61a, 68a). On another occasion he testified as a volunteer government witness against a fellow prison inmate with respect to alleged conversations between himself and the inmate (93a-95a) for which effort he undoubtedly expected some consideration from the government. Other attempts were made by Mishel to curry favors from Prosecutors. For example, when asked in a series of questions whether he had offered to testify for District Attorney Hogan in connection with the notorious Jelke prostitution case, about which he knew nothing, in consideration for a promise of early parole (243a-245a) he answered the whole series of questions with the familiar "I don't remember" (243a-245a). A similar answer was given to

a question as to whether he had urged Wissenfield, a fellow prison inmate, to give false testimony in another bond matter (242a, 243a). Nor could he recall whether he had volunteered to give Secret Service Agent Motte some testimony relating to the theft from a bank of unissued government bonds (245a).

We have documented in detail the characteristics of Mishel and his propensities for inducing prosecutors, and others, to make bargains with him in exchange for testimony, only because, in the instant case, he turned out to be the government's chief and main witness against the defendant Miller. Of course he had additional special reasons to wreak vengeance upon Miller—because Miller was the main cause of his downfall which began with the 1952 conviction in the Alpren stock case (660a). And not only was there proof of two other felony convictions after that (19a, 20a), but Mishel also admitted that he had committed many crimes for which he had not been convicted (107a, 108a), some of which involved the cashing of stolen bonds (108a, 109a). Indeed, he pleaded guilty to a grand larceny indictment involving the cashing of about $6,000 worth of bonds at the Bankers Trust Company (234a) which is one of New York's leading banking institutions.

As the Government's chief witness, Mishel told a fantastic story against Miller in which he tried to implicate Miller, a bank president of unblemished record, as his partner in crime who, for 10%, or $668.45, of the face value ($6,684.50) of the Chernoff bonds arranged to have them illegally cashed at the bank of which he was President (29a-34a). Miller's salary as president of this large New York City bank does not appear in the record, but presumably it was substantial. If Mishel's fabricated story is to be believed, then Miller belongs in a mental and not a penal institution. That Miller would risk his reputation, position and standing in the community for such a monetary pittance, as a mere matter of economics—

and moral considerations aside, is an assertion which only one with the characteristics and motives of Mishel could make. Not a single witness corroborated Mishel's story of Miller's alleged collaboration with him in criminal activities. Even, Rosenberg, who was convicted with Mishel for the part he played in the Chernoff bond deal was not called by the government to substantiate any of the details related by Mishel. The defendant, of course, denied Mishel's story, in toto (608a-615a; 629a; 646a-655a). Much of Mishel's testimony (19a-247a) deals with matters wholly irrelevant to the indictment and also irrelevant to the basis of this petition for certiorari. We will limit ourselves to the matters relevant to this petition.

Mishel testified that at the time of the Chernoff bond cashing transaction, he came into the bank alone with the bonds and asked Miller to cash them (29a). Miller, according to Mishel, simply said (29a):

"I can cash them. Have somebody sign them."

Thereafter, according to Mishel, he had Rosenberg sign them (29a, 31a) and the signed bonds were brought back the next day by Mishel to Miller (31a). Miller refused to cash them on this second occasion, according to Mishel, only because they were not properly signed (31a). Thereupon, Mishel said he telephoned Rosenberg and had him come over to the bank and re-sign the redemption forms properly (32a).

Why Mishel and Miller, if they were the partners in crime that Mishel claimed them to be, should hesitate to sign the bonds themselves, does not appear. Surely such arch-villains would not hesitate at a little matter of forgery. On other occasions, notably the Alpren stock deal, Mishel was not so squeamish about forgery. But Mishel insisted that the signing was done by Rosenberg

(32a). In this he was right, but the signing by Rosenberg took place under entirely different circumstances than those described by Mishel. Miller, it will be recalled, testified that Mishel came into the bank with a man he described as his friend and whom he identified as Mr. Chernoff (626a, 728a, 729a). The man so introduced acknowledged himself to be Chernoff and declared himself to be the owner of the bonds (626a, 728a, 729a). Later, of course, it developed that he was, in fact, Rosenberg, and, upon Miller's testimony, he was subsequently indicted and convicted for forgery (68a, 761a).

At the trial, of course, the direct conflict between Mishel's version of the circumstances under which the bonds were cashed and the defendant's testimony as to the same transaction, presented a sharp issue of veracity. It became one of the crucial issues in the case. The credibility of the respective witnesses on the subject was, therefore, of paramount importance.

On his cross-examination Mishel admitted that he had made many prior statements to government agents (65a; 194a-201a; 207a, 208a; 230a, 231a). The witness had a distinct recollection of a 50 page statement which he described as a "master" statement (230a) and when asked whether the statement conformed to his trial testimony, he conceded that "It could vary a little" (231a). And when asked whether everything he testified about was in the statement, he answered (230a):

> "Practically. There could be some isn't, some is; I don't know."

The Assistant United States Attorney gave Mishel the "master" statement to read just before the trial (230a, 231a). The witness gave the "master" statement three years before the trial (207a) but he unqualifiedly stated (207a): "From time to time I made additional statements". The successive additional statements, according

to Mishel, consisted of additions to the "master" statement. As the witness put it: "No, they were added to it. There were some more facts to it" (208a). The text of the "master" statement itself was not changed (208a).

Thus, the proper foundation having been laid, defense counsel thereupon made the following application to the court (246a):

> "Mr. Rosenblum: I now respectfully ask your Honor that the statements that this witness has testified about be produced by the Government for your Honor so your Honor may examine them under the *Krulewich* case to see whether or not there is something in them, which would entitle me to use them for cross-examination."

The United States Attorney stated that he had the "Master" statement in his office, but that he did not know where any other statements were (246a).

The Court directed the prosecution to produce any statements in its possession (246a) but, despite the many statements which Mishel said he made (65a, 194a-201a; 207a, 208a, 230a, 231a), only two were produced by the government, viz. the "master" statement made in 1953 and a statement dated February 28, 1955 (62a). There was no explanation offered for the failure to produce the others.

The Court refused to permit the defense to examine the so-called "master" statement because, in the judge's opinion (1), there was no "material inconsistency" between it and the testimony and (2) it contained some things unrelated to the case (369a).

The judge did permit defense counsel to have the second statement dated February 28, 1955 (369a, 370a) and

it was turned over to defense counsel for their inspection at 10:30 A. M. on October 24, 1956 (368a-370a), two days after the witness Mishel had left the stand (157a, 247a). At about two o'clock in the afternoon of the following day the Government suddenly rested its case (463a, 477a). The defense, of course, had no advance notice of the point at which the government was going to rest. Confronted with the situation thus presented, defense counsel promptly moved for alternative relief as to the February 28th statement of Mishel (498a). He asked that he either be permitted to offer it in evidence or that Mishel (who was in the building) be re-called for cross-examination with respect to it (498a). The Government opposed the application on the basis of the *Krulewich* and *Gordon* cases (499a). The trial judge denied the defense application in its entirety (502a). Thus, as a practical matter, although the defense had been furnished with one of the Mishel statements it was precluded from making any use of it.

Not to be able to obtain one, or use the other, of the prior statements of the government's chief witness Mishel, was, of course, most prejudicial to the defense.

Sershen, the Secret Service Agent, who had the interviews with the defendant as to the Chernoff bond transaction, was, of course, another important government witness (464a-477a). Indeed, it was this interview which precipitated the writing of the three letters upon which the indictment was based (43a). The sharp difference between Miller's and Sershen's version of the interview was crucial in the case as it was presented. Sershen testified that he made reports to the Treasury Department of the Chernoff bond transaction and the parts played in it by Miller and Mishel (68a), one of which was referred to as "an additional report from me (Sershen) concerning the negotiation of the bonds and the part that Mishel and Mr. Miller played" (69a).

Sershen's testimony, of course, related to exactly the matters as to which he said he made reports. However, only one such report was produced and it was marked defendant's Exhibit B for identification (68a, 69a). The record conclusively shows that defense counsel had asked for the production of all reports including those of the Secret Service Agent (246a, 247a). The failure of the government to produce this second Sershen report was as prejudicial as what occurred with respect to the Mishel statements.

In cross-examining the defendant, the government, over objection, was permitted to ask a series of collateral questions implying moral turpitude upon the part of the defendant and was not restricted to acts of misconduct for which convictions had been had (669a). For example, over defense counsel's objection and exception (669a, 670a) the defendant was asked whether, when he was Vice-President of the bank, the then President had not criticized him (Miller) for "allowing bookmakers to draw against uncollected funds" (669a, 670a); and for allowing the kiting of checks (671a). He was also asked whether the State Banking Department had not, in 1931, criticized him for allowing a bookmaker to "make book in a public telephone in the lobby" of the bank (671a). In other lines of cross-examination, Miller was asked whether he had not been subjected to a "full-scale" investigation by the Banking Department (672a); whether he had not been criticized for making loans to bookmakers (668a). Despite the defendant's negative answers to all these questions, the distinct impression was left in the minds of the jury, by the mere asking of the questions, that the defendant was of bad moral character who engaged in all forms of illegal banking practices and was tied-in with a group of shady and unsavory criminal characters.

Basis for Federal Jurisdiction in the District Court

The basis for Federal Jurisdiction in the District Court is believed to be United States Code, Title 18, Section 1001, Section 3231.

Argument Amplifying the Reasons Relied on for the Writ

The court below has decided important questions of federal law in a way probably in conflict with the applicable decisions of this court.

QUESTION ONE

Under the rule of the recently decided *Jencks* case (*Jencks* v. *United States*, 353 U. S. 657) was it reversible error for the courts below to (1) deny the defendant the right to examine a prior inconsistent statement of the government's principal witness Mishel and (2) to foreclose defense counsel from making any use of another (and concededly contradictory) statement of the same witness which was not made available to the defendant until after the witness left the stand and (3) to also refuse to make available to defense counsel one of two prior reports made by another government witness (a Secret Service Agent) on the subject matter of his testimony?

We have heretofore documented the portions of the record which pose the foregoing questions (ante, pp. 21-24).

The instant case was argued in the Court of Appeals on May 17, 1957 (42a) and this court's decision in the

Jencks case was not rendered until June 3, 1957 (353 U. S. 657). At the trial, defense counsel in the instant case believed, as did defense counsel in the *Jencks* case (Cf. *Jencks* v. *United States*, 353 U. S. 657 at p. 670), that the Court of Appeals decisions in the *Krulewich* and kindred cases, restricted his motions with regard to statements to a request that the trial judge inspect the prior statements for his determination as to whether, and to what extent, the statements should be made available to the defendant (246a). Laboring under this erroneous, but excusable misunderstanding of the law, no issue was raised on the main appeal as to the denial to the defendant of such statements. However, after the Court of Appeals made its decision on July 10, 1957 affirming the judgment of conviction (42a) the petitioner filed a timely petition for rehearing based on this court's decision in the *Jencks* case (117a). The Court of Appeals, in an opinion (117a-121a; Appendix hereto, pp. App. 1-App. 5), denied the rehearing on three grounds.

The first ground of denial dealt with the Mishel statement of February 28, 1955 which the trial court had directed the government to deliver to the defense, but which had not actually been delivered until two days after Mishel had left the stand (118a, 119a, 157a, 247a; 368a-370a). In dealing with this situation, the Court of Appeals pointed out that the defense counsel had he statement in his possession for about twenty-four hours before moving to recall Mishel for further cross-examination or for permission to introduce the statement in evidence (118a). Further, the Court of Appeals pointed out that the defendant's application was not made until after the government rested (118a). In the view of the Court of Appeals, the defendant should have made his motion sooner and because he had not done so, there was no abuse of discretion in denying the defendant's alternative motion (119a). In reaching its conclusion, the Court of Appeals apparently overlooked several important things. During a great part of the

approximately twenty-four hours that elapsed between the delivery of the statement and the defendant's motions with respect thereto, defense counsel was actually engaged in the trial of the case. And any experienced trial lawyer knows that during the after court hours, counsel spends a good part of the night preparing for the following day in court. Then, too, counsel must sleep and eat. If the court time, and the time required for sleeping and eating, to say nothing of the night preparation time, is subtracted, the twenty-four hour period would be substantially reduced. The Court of Appeals apparently overlooked, too, the fact that defense counsel had no way of knowing when the government would rest. Actually, the government had not produced the statement for over 48 hours after Mishel had left the stand (157a, 247a; 368a-370a), so that the lack of timeliness was, in large measure, chargeable to it. In the last analysis, however, to deny the defendant so substantial a right on the basis of a fine hair-splitting question of timeliness of his application, under the circumstances of this case, seems most unjust. How many hours, or minutes sooner the application should have been made is not indicated by the court below.

The second ground of the Court of Appeals denial of a re-hearing dealt with the trial judge's denial of the right of inspection with regard to the "master" statement (119a, 120a). As to this, the Court assumed that it was error for the trial court to deny this inspection (119a). However, it pointed out that by a stipulation dated December 18, 1956 (78a) counsel had agreed that the "master" statement need not be made a part of the record and for this reason it said "Since we (the Court of Appeals) cannot know that the failure to deliver the statement, properly excised, was prejudicial to the defendant, we do not think a new trial should be ordered" (120a). There are two complete answers to the reasoning of the Court of Appeals. In the first place, the stipulation not

to print the "master" statement was made on December 18, 1956 (78a), or more than six months prior to this court's decision of the *Jencks* case in June 1957. At the time of the stipulation, the *Krulewich* case was the controlling authority, and under it, the defendant did not have the absolute right to compel the production of such statements. In short, at the time the record on appeal was prepared, there was not any appealable issue that could be raised relating to the denial of an inspection of the statement. Surely a defendant should not be penalized because of the failure of his counsel to anticipate this court's decision in the *Jencks* case. But there is a more conclusive answer to the reasoning of the Court of Appeals. Under this court's decision in the *Jencks* case, the defendant has the absolute right to examine a prior statement of a witness once it is established that such statement exists and relates to the testimony of the witness. That was conclusively established in this case (230a, 231a). This court, in the *Jencks* case, pointed out that irrelevant matter could be excised. A proper foundation having been laid, the defendant had the absolute right, regardless of the content of the statement, to inspect it under this court's *Jencks* decision. There was absolutely no need for the Court of Appeals to see the statement—and it was, therefore, completely unimportant that it was not made a part of the record. Prejudice to the defendant must be presumed from its denial because a complete foundation for it in accordance with the *Jencks* case (353 U. S. 657, 669), had been laid (230a, 231a).

The third and final ground of the denial of a re-hearing dealt with the second or "additional" report of Secret Service Agent Sershen (120a, 121a). Here the ground of denial was the alleged failure to lay a proper foundation (121a). The court conceded that Sershen's testimony that he had made "an additional report . . . concerning the negotiation of the bonds and the parts played in it by Miller and Mishel" (69a) did, perhaps, "justify an infer-

ence that Sershen had made a prior report" (120a). In our view, there is no other permissible inference. The Court of Appeals speculated, however, that such prior report "may have been oral". There is no basis in the evidence for such speculation. Indeed, the more logical inference is that the "additional" report was written—as was the case of the one produced. Finally, the court said that if it were a written report "there is nothing to indicate that it related to interviews with Miller or Mishel" (120a). We are at a complete loss to understand how such a statement could be made. Sershen's testimony was that he made "an additional report . . . concerning the negotiation of the bonds and the parts played in it by Miller and Mishel". Sershen's entire testimony related to exactly the same subject, i. e. the sale of the bonds and the parts played in it by Miller and Mishel (464a-477a). Under the circumstances, therefore, a completely proper foundation had been laid, within the *Jencks* case, to require the production of the second, or "additional", Sershen report.

QUESTION TWO

Does the statute (18 U. S. C. §1001) upon which the indictment was based make it a crime for a person, in this case a bank president, to write a letter to a government agency which merely recites his (the writer's) interpretation of conclusions reached by government investigators who had interrogated the writer with respect to the procedures followed by the bank in cashing certain government bonds, or does the statute only make criminal a willfully false and fraudulent statement of a material fact, as distinguished from mere opinion?

If the statute under which the defendant was indicted (18 U. S. C. §1001) is to be construed as contended for here by the Government, the results will, indeed, be far-reaching. The age-old conception of the crime of perjury will be gone (18 U. S. C. §1621). Any person who failed to tell the truth to the myriad of government investigators and representatives who now circulate throughout the land about any matter, regardless of how trivial, whether civil or criminal, or whether merely the expression of an opinion as to a conclusion reached by a government agent, will render the person subject to indictment and conviction of serious Federal crime. And any such mis-statement will be penal in character even though the government was neither misled, deceived or defrauded thereby.

We have been unable to find any reported case where the mere writing of letters, such as those here involved, was held to constitute a crime within this statute. The genesis of the letter writing was the civil claim of the government for reimbursement in the amount of $6,684.50 for bonds erroneously cashed (Exhibit 28a; 32a, 33a).

In the second letter, which formed the basis of the second count (Exhibit 23; 29a, 30a), the defendant advised the Government that its claim would be paid as soon as it was processed (30a). The claim was, in fact, paid in full (645a).

Whether the letters be read singly, or collectively, the most that can be said against them is that the defendant as the President of the Bank, and the bank's attorneys, were trying to explain their reasons for "feeling" that the bank should not be required to pay the loss. The indictment alleges that the defendant in writing the first two letters made "a false and fraudulent statement as to a material fact" in expressing his conclusion that the Chernoff bonds were cashed in compliance with government regulations (1a). Whether or not the regulations were complied with was, at most, a question of Miller's opinion. But what about the word "fraudulent" which appears in both the statute and the indictment. Certainly, its use expresses or implies the thought that some government agency was defrauded by reason of the two letters. What fraud was committed, or how the letters accomplished it, remains completely unexplained in this record.

The third count of the indictment, based upon a letter written by the bank's attorney, alleges that the fraudulent statement of material fact was the representation that Mishel introduced a person to Miller as Chernoff. Again, we have the question of what fraud was accomplished and how the letter played a part, directly or indirectly, toward that end. The letter itself (Exhibit 24: 40a, 41a) suggested a re-investigation of the transaction and gave assurance of full cooperation therein (41a). A fair interpretation of the letter is that it was merely an attorney's letter written for the purpose of explaining why his client felt that it should not be required to pay a claim. In no sense was it designed to nor did it accomplish any fraud. And, at all events, the mere fact that Miller saw the let-

ter before it was sent, is not enough to make him the author of it as the third count of the indictment charged (2a). Since the writing of the letters here involved does not constitute a crime within the meaning of the statute under which the indictment was found, the defendant's motions for judgment of acquittal, made at the close of the Government's case (479a-484a), and renewed at the end of the entire case (802a, 803a), should have been granted and the indictment dismissed.

QUESTION THREE

Was it reversible error for the trial court to permit (and the Court of Appeals to approve) an extensive and highly prejudicial cross-examination of the defendant as to various (but unproved) collateral matters implying moral turpitude, the mere inquiries as to which, despite defendant's denials, suggested to the jury that the defendant was a man of bad moral character and unworthy of belief, or should the cross-examination have been restricted, in accordance with the prevailing rule in all the Federal circuits, to those collateral matters which involve a conviction for felony, or for such misdemeanors as embraced moral turpitude?

We will not repeat the references to and documentation of the portions of the record dealing with the improper cross-examination because it is all contained in the last paragraph of our "Statement of the Case" (See, ante, p. 24).

The Court of Appeals disposed of the contention that the improper cross-examination constituted reversible error in a single (and the concluding) paragraph of its opinion for affirmance (49a). It reached the conclusion

that no reversible error was committed because—so it reasoned—the defendant by taking the stand had placed his character in issue. Further, the court pointed out, he had on his direct examination testified, in detail, as to his unblemished banking career. But then it added this most significant and shocking statement (49a):

> "The cross-examination sought to demolish the claims he had voluntarily asserted".

We thoroughly agree with the court below, that the purpose of the cross-examination was to "demolish" the character of the defendant. We go further, and assert that a thorough demolition job was accomplished in the eyes of the jury. The desired objective was accomplished by the unfair and prejudicial trial tactic of asking on cross-examination, a whole series of collateral questions suggesting divers forms of immorality and misconduct, which questions, despite the defendant's negative answers, created the false and untrue impression that the defendant was a man of bad character and wholly unworthy of belief.

A reading of the line of questions which were asked this defendant on cross-examination (See ante, p. 24), such as, whether his superior had not criticized him for allowing "bookmakers" to draw on uncollected funds; whether he had not allowed the "kiting" of checks: whether he had not been reprimanded by the State Banking Department for permitting a bookmaker to carry on his business from a telephone booth in the lobby of the bank; whether he had not been subjected to a "full scale" investigation by the State Banking Department; whether he had not been criticized for making loans to bookmakers—all the foregoing questions (ante, p. 24) and others of like character, could not, despite the defendant's vehement denials, do other than create the totally false picture in the minds of the jury that the defendant was the consort of criminal characters and a shady banker who engaged in loose and illegal banking practices. There was not a

scintilla of evidence in the case of any of the acts of misconduct which were insinuated by the foregoing questions. But the harm was done by the mere asking of the questions.

No idea was entertained by the cross-examiner that proof would be elicited by the matters implied in his questions. We say "implied" because the asking of the direct questions, in the manner in which they were asked, implied to some degree that the examiner, who represented the United States Government, was possessed of information upon which the questions were based, and although the answers were in the negative, the bad effect of the insinuations thrown out by the questions, could not have failed to leave a deep and lasting adverse impression in the minds of the jury.

Here the conclusion is irresistible that the whole series of questions were asked for the sole purpose of planting in the minds of the jury suspicion and distrust by insinuations that the defendant had falsely denied his guilt as to the collateral matters embraced in the question. The questions were so framed that it is quite apparent that they were calculated, by suggestion of misconduct, to prejudice the jury, regardless of the answers given. By the line of questions which the prosecutor pursued on cross-examination here the jury could not have failed to gain the general impression, and strong conviction, that the defendant was a bad sort who should be convicted for other acts, if not for the crime charged (Cf. *United States* v. *Grayson*, 166 Fed. 2nd 863, 870, 871).

An accused defendant in the witness box, though completely innocent, when subjected to such a line of cross-examination as to collateral matters as was allowed here, is in a helpless and hopeless position. All that he can do is give a big resounding negative answer to every question. But despite his denials, the harmful effect of the questions

makes its bad impression on the jury. The prosecutor, however, is in an invulnerable position. He can, without the slightest danger to his case, ask any insinuating misconduct question which his imagination can conjure up. If the defendant admits the misconduct, the prosecutor has definitely scored. But even if it is denied, the prosecutor still scores heavily because the jury gets the distinct impression that the denial of the misconduct is false because the prosecutor, who represents the government, would never have asked the question unless he had some basis for it. The prosecutor scores either way, therefore, and runs no risks in asking the question. His is a completely safe position, while that of the accused is a hopelessly defenseless one. Such a system for the trial of criminal cases is repugnant to our basic and elementary sense of justice, decency and fair play. Wigmore regards such a system (which does not prevail in the Federal courts, as we shall hereafter demonstrate) as so offensive that, in an interesting analogy, he likened it to the difference between the hunt and the slaughterhouse. Wigmore's comment on such a system is as follows:

> "It is the difference between the hunt and the slaughter-house. One may well enough find sport in stalking the lion in the desert or beating the bush for the tiger, because there is risk for the hunter which dignifies his sport, and there is a rapacity and a destructiveness in the hunted which leaves no room for sympathy; but the process of cutting the throat or knocking the head of a sheep or an ox penned in the shambles is both safe and brutal, and is to be justified only on the ground of its absolute necessity" (Wigmore on Evidence, Third Edition, § 983, p. 551).

We agree that the ruthless flaying of personal character in the witness box is, among other things, cowardly, because there is no escape for the victim. More than that, however, it is brutal—because it unfairly inflicts the pain of groundless implications of misdeeds which the defend-

ant is helpless to combat. Its most vicious aspect, however, is that it leads to guilty verdicts against innocent people. The risks of jury trials in criminal cases are notorious—as is the frequency with which prejudice injects its ugly head into them. An overzealous prosecutor should, therefore, be precluded from arousing jurors' prejudices against a defendant by unfair trial tactics. This philosophy was well expressed in the dissenting opinion of the late Judge Frank of the Second Circuit in the case of *United States* v. *Antonelli Fireworks Co.*, 155 Fed. 2nd 631 (2nd Cir. 1946), wherein he said (at pp. 658, 659):

> "A jury trial, at best, is chancey. 'Mr. Prejudice' and 'Miss Sympathy' are the names of witnesses whose testimony is not recorded, but must nevertheless be reckoned with . . . and most jurors have no trained capacity for doing so. If government counsel in a criminal suit is allowed to inflame the jurors by irrelevantly arousing their deepest prejudices, the jury may become in his hands a lethal weapon directed against defendants who may be innocent. He should not be permitted to summon that thirteenth juror, prejudice."

Fortunately, and with singular unanimity, with the single exception of the Court of Appeals decision in this case, all the Federal courts, including the Second Circuit, are in accord that in a criminal case, a defendant may only be cross-examined as to those collateral acts of misconduct as have resulted in convictions for felony or for misdemeanors involving moral turpitude. This reasonable rule has a sound and logical basis because it prevents such unfair tactics as were resorted to in the instant case, but at the same time it allows the prosecutor a fair latitude of examination as to collateral matters. The rule of limitation is more strict in the case of a defendant in a criminal case than it is with respect to an ordinary wit-

ness. The reasons for this stricter rule as to a defendant in a criminal case was well stated in *United States* v. *Schiller*, 187 Fed. 2nd 572 (2nd Cir. 1951) where the court said (p. 576):

> "Cross-examination as to his past acts of misconduct may prejudice the defendant *qua* accused in the eyes of the jury to an extent which far outweighs any value it may have as evidence on the issue of his credibility as a witness. For that reason, Wigmore suggests that such impeachment should be limited more strictly in favor of the accused than in the case of the ordinary witness". See Wigmore, §983(4), 987. Cf. 8 Wigmore §2277(4); *Gidion* v. *U. S.*, 52 F. 2d 427, 429-430; *Ellis* v. *District of Columbia*, 45 App. D. C. 384, 388.

Peculiarly enough, it was an opinion of the Second Circuit Court of Appeals, in the case of *Provo* v. *United States*, 215 Fed. 2nd 531 (2nd Cir. 1954) that first recognized the impressive unanimity of Federal Court decisions restricting the right of cross-examination of a defendant in a criminal case to those collateral matters which had resulted in conviction for felony or for misdemeanors involving moral turpitude. In that case, an army staff sergeant was convicted of treason. On his cross-examination the defendant had been cross-examined with respect to whether or not he had not been confined to an army hospital because of his homosexual aberrations. The Court of Appeals held that such cross-examination was reversible error and in so doing said (p. 536):

> "In the Federal courts there has been an impressive unanimity of view on the point before us. As generally held, specific acts of misconduct not resulting in conviction of a felony or crime of moral turpitude are not the proper subject of cross-examination for impeachment purposes."

We are at a loss to understand why the Court of Appeals in the instant case, decided three years later, failed to follow its own rule, as laid down in the *Provo* case. Nor can we account for its departure from the rule of all the other Federal Courts in view of its recognition, in the *Provo* case, that there was an "impressive unanimity" on the point.

However, in acknowledging the "unanimity" with which the Federal courts adhered to the rule limiting cross-examination of a defendant in a criminal case, the Second Circuit Court of Appeals, at least in the *Provo* case (although not in the instant one), was clearly right. We will merely cite some of these cases from other circuits:

Escheat v. *United States,* 188 Fed. 2nd 336, 343 (8th Cir. 1951) which cites three other 8th Circuit cases to the same effect;

Henderson v. *United States,* 202 Fed. 2nd 400, 406 (6th Cir. 1953);

Pearson v. *United States,* 192 Fed. 2nd 681 (6th Cir. 1951);

Westwater v. *Lyons,* 193 F. 817 (3rd Cir. 1912);

Ross v. *United States,* 93 Fed. 2nd 950 (7th Cir. 1937);

Simon v. *United States,* 123 Fed. 2nd 80 (4th Cir. 1941), cert. denied, 314 U. S. 694;

Glover v. *United States,* 147 Fed. 426 (8th Cir. 1906);

Pittman v. *United States,* 42 Fed. 2nd 793 (8th Cir. 1930);

Lennon v. *United States,* 20 Fed. 2nd 490, 494 (8th Cir. 1927);

United States v. *Klass,* 166 Fed. 2nd 373, 376 (3rd Cir. 1947);

Scaffidi v. *United States,* 37 Fed. 2nd 203, 211 (1st Cir. 1930);

Campion v. *Brooks Transp. Co.,* 135 Fed. 2nd 652, 653 (U. S. C. A. Dist. of C., Vinson, J.) 4th Cir. 1943;

Ingram v. *United States*, 106 Fed. 2nd 683, 684 (9th Cir. 1939).

Thus, the foregoing decisions from the 1st, 2nd, 3rd, 4th, 6th, 7th, 8th and 9th Circuits, demonstrate that the rule is uniformly applied in eight out of the eleven Circuits in the United States. There is no evidence of any different rule in the other three Circuits. The instant case represents the only contrary decision on the point and it is, therefore, *sui generis*.

In the face of the foregoing impressive authorities, we confidently assert that the decision of the Court of Appeals on the point, as rendered in the instant case, is completely out of line with the prevailing Federal rule. If principles can ever be settled by authority, if the slightest respect is due to the opinions of other tribunals, it would seem that the court below should not have rejected the overwhelming weight of authority reflected by the cited decisions.

For the sake of maintaining a uniform Federal rule, in which principle, citizens generally, and not merely the petitioner, are vitally interested, certiorari should be granted herein.

Conclusion

Wherefore, it is respectfully submitted that this petition for a Writ of Certiorari to review the judgment of the Court of Appeals for the Second Circuit should be granted.

N. LEVAN HAVER,
Attorney for Petitioner,
41 Pearl Street,
Kingston, N. Y.

Dated, October 25, 1957

Opinion of the Court of Appeals Denying the Petition for a Rehearing

UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT

No. 307—October Term, 1956.

(Petition filed July 24, 1957 Decided October 1, 1957.)

Docket No. 24457

UNITED STATES OF AMERICA,

Appellee,

—v—

JAMES W. MILLER,

Defendant-Appellant.

Before:

CLARK, *Chief Judge*, and
SWAN and POPE, *Circuit Judges*.

Petition for Rehearing

N. LE VAN HAVER, *Attorney for Appellant*.

PAUL W. WILLIAMS, United States Attorney, for Appellee; Adelbert C. Matthews, Jr., Assistant U. S. Attorney, of Counsel.

PER CURIAM

After our decision of affirmance on July 10, 1957, the appellant filed a timely petition for rehearing raising new

Opinion of the Court of Appeals Denying the Petition for a Rehearing

issues based on *Jencks* v. *United States*, 353 U. S. ——, a decision rendered subsequent to the argument of Miller's appeal. The Government having been allowed to answer the petition and the petitioner to file a reply, which he did on September 10th, the matter is ready for determination.

The petitioner contends that he is entitled to a new trial because the trial procedure was not in accord with the rule subsequently announced in the *Jencks* case. An important witness for the prosecution was Irving Mishel. At defense counsel's request two statements made by Mishel and in the possession of the Government were examined by Judge Walsh pursuant to the rule of *United States* v. *Krulewitch*, 2 Cir., 145 F. 2d 76 to determine whether counsel was entitled to use them in cross-examination. One of the statements, dated February 28, 1955, was turned over to counsel, but use of the other statement, made in 1953, was denied, because Judge Walsh found that it contained nothing materially inconsistent with Mishel's testimony and did contain matter "unrelated to this case." The statement was marked "Court's Exhibit 3", placed in a sealed envelope and filed with the Clerk of the Court. By stipulation between appellant and appellee dated December 18, 1956 this exhibit was excluded from the record on appeal.

1. The petition for rehearing complains that the 1955 statement was not made available to the defense until after the cross-examination of Mishel had been concluded and the prosecution had closed its case. The record does not bear this out. Counsel got the statement on the morning of October 24th. This was after Mishel had left the stand but long before the Government rested on the afternoon of October 25th. When the Government rested, defense counsel moved for judgment of acquittal and during the

argument asked for leave to put Mishel's 1955 statement in evidence or to recall him for cross-examination about it. This request was denied. The petitioner claims that such denial is contrary to the law established by the *Jencks* case. The Government contends that the only issue presented is whether Judge Walsh's refusal to recall Mishel was an abuse of discretion and that the *Jencks* case has nothing to do with this issue. We think the Government is right. The statement, which does not appear in the record on appeal, is a short one, according to the government's answer to the petition for rehearing, consisting of only four handwritten pages. Defense counsel received it on the morning of October 24th and the government did not rest until the afternoon of October 25th. During this interval there would appear to have been ample time for counsel to examine the statement and make his motion to recall Mishel for further cross-examination before the government rested. We see no abuse of discretion in denying the motion. It was made too late.

2. With respect to the 1953 statement the petitioner complains that under the *Jencks* decision he was entitled to have the statement delivered to defense counsel, despite Judge Walsh's determination that it contained nothing materially inconsistent with Mishel's testimony. This is true. But if the case is remanded for a new trial, the procedure will be governed by the recent amendment to Chapter 223 of Title 18 of the United States Code. Concededly the statement contains some matter not related to the subject matter of Mishel's testimony. Hence, subdivision (c) of the new statute will apply, and it will be the duty of the trial judge to "excise the portions of such statement which do not relate to the subject matter of the testimony of the witness," and "With such material excised,

the court shall then direct delivery of the statement to the defendant for his use." We shall assume that Judge Walsh's failure to follow such procedure was an error but we cannot determine whether or not it was a prejudicial error because the exhibit has by stipulation been excluded from the record on appeal. Since we cannot know that failure to deliver the statement, properly excised, was prejudicial to the defendant, we do not think a new trial should be ordered.

3. Two Special Agents of the United States testified as witnesses for the prosecution. Agent Sweeney testified to the existence of a report prepared by Agent Sershen in October 1950. Pursuant to request, this report, marked "Defendant's Exhibit B" for identification, was given to defense counsel. The following morning counsel informed the court that he had no further questions to ask Agent Sweeney. During cross-examination of Agent Sershen, he testified that in October 1950 his office received a letter from the Treasury Department and that "* * * that there was a request made in that letter for an additional report from me concerning the negotiation of the bonds and the part that Mishel and Mr. Miller played. And I submitted a report in answer to that letter." This report of October 1950 was apparently assumed by defense counsel to be the report already delivered to him as Defendant's Exhibit B for identification, since at no time during Agent Sershen's direct or cross-examination did counsel ask for the production of any statements or reports, nor question him about Exhibit B. However, it is now contended that the word "additional" in Sershen's above-quoted testimony indicates that he made a prior report which should also have been delivered to defense counsel under the *Jencks* case ruling. We think the contention unsound. While

the word "additional" may justify an inference that Sershen had made a prior report, such prior report may have been oral, and, if it be assumed to have been a written report, there is nothing to indicate that it related to interviews with Miller or Mishel. Sershen was never questioned about a prior report. Under the *Jencks* case the defense must lay a preliminary foundation that a statement or report is in existence and relates to the subject matter of the testimony of the witness. We do not think such preliminary foundation was laid with respect to a prior report by Sershen.

4. The petition for rehearing is denied but petitioner's alternative request for a stay pending application for certiorari is granted pursuant to Rule 28(c)(2) of this Court.

Opinion of the Court of Appeals Affirming the Judgment of the District Court

UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT

No. 307—October Term, 1956.

(Argued May 17, 1957 Decided July 10, 1957.)

Docket No. 24457

UNITED STATES OF AMERICA,

Appellee,

—v.—

JAMES W. MILLER,

Defendant-Appellant.

Before:

CLARK, *Chief Judge*,
SWAN and POPE, *Circuit Judges*.

Appeal from the United States District Court for the Southern District of New York, Lawrence E. Walsh, *Judge*.

From conviction and sentence on an indictment which charged the making of false and fraudulent statements in violation of 18 U. S. C. A. §1001, the defendant has appealed. Affirmed.

GAREY & GAREY and N. LEVAN HAVER, *Attorneys for Appellant;* Jacob J. Rosenblum, Sol Irving Sokolsky and Peter F. Rooney, of Counsel on main brief, and Charles H. Gaffney, of Counsel on supplemental brief.

Opinion of the Court of Appeals Affirming the Judgment of the District Court

PAUL W. WILLIAMS, United States Attorney, *for Appellee*; Adelbert C. Matthews, Jr., George C. Mantzoros and Maurice N. Nessen, Assistant United States Attorneys, of Counsel.

SWAN, *Circuit Judge:*

This appeal is from a judgment of conviction and sentence, after trial to a jury, for making false and fraudulent statements in a matter within the jurisdiction of the Fiscal Service of the United States Treasury Department.[1] The indictment comprised three counts, each based on a separate letter addressed to the Fiscal Service and concerned with the cashing of certain United States Savings Bonds at a bank of which the defendant was president. The bonds were registered in the names of members of the Nat Chernoff family from whom they had been stolen. The Treasury Department claimed that the bank was liable for erroneous payment of the bonds, and the three letters were written for the purpose of convincing the Fiscal Service that the bonds had been properly cashed in accordance with the requirements of the Treasury's circular letter. Irving Mishel, a depositor of the bank, had presented the bonds for redemption. He was a convicted felon who ran an illegal check-cashing agency and was in the business of

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[1] The offense is defined in 18 U. S. C. A. §1001 which reads as follows:

> "Whoever, in any matter within the jurisdiction of any department or agency of the United States knowingly and willfully falsifies, conceals or covers up by any trick, scheme, or device a material fact, or makes any false, fictitious or fraudulent statements or representations, or makes or uses any false writing or document knowing the same to contain any faults, fictitious statement or entry, shall be fined not more than $10,000 or imprisoned not more than five years, or both."

disposing of stolen bonds. He testified as a witness for the prosecution. His testimony, if believed, would justify the jury not only in discrediting Miller's testimony that he was an innocent dupe of Mishel but in finding that he knew that Mishel had no right to cash the bonds and received 10 per cent of their proceeds for assisting him to do so. All the points urged on appeal are technical and lack substantial merit.

The first to be considered relates to venue. The letters containing the allegedly false and fraudulent statements were mailed in New York City. Two of them were received by the addressee in Washington, D. C., the other in Chicago, Illinois. The appellant contends that the crime defined in section 1001 of Title 18 is committed only when the false statement is communicated to the federal agency having jurisdiction of the matter involved; consequently venue was improperly laid in the Southern District of New York. This argument takes no account of another statute, 18 U. S. C. A. §3237, dealing with offenses commenced in one district and completed in another.[2] The precise point with respect to the crime of which the appellant has been convicted was determined in *De Rosier* v. *United States*, 5 Cir., 218 F. 2d 420, cert. denied 349 U. S. 921. We agree with it. Moreover, even if the venue point had merit, we should have to hold that it was waived, since the defendant, with

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2 "§3237. Offenses begun in one district and completed in another

Except as otherwise expressly provided by enactment of Congress, any offense against the United States begun in one district and completed in another, or committed in more than one district, may be inquired of and prosecuted in any district in which such offense was begun, continued, or completed.

Any offense involving the use of the mails, or transportation in interstate or foreign commerce, is a continuing offense and, except as otherwise expressly provided by enactment of Congress, may be inquired of and prosecuted in any district from, through, or into which such commerce or mail matters moves."

full knowledge that the counts in the indictment were based on the letters did not question venue until after the prosecution had rested its case.

Prior to trial the defendant moved for dismissal of the first and second counts of the indictment on the ground that they do not inform him of the nature of the accusation nor provide "a plain, concise and definite written statement of the essential facts constituting the offense charged," as required by Rule 7(c), Federal Rules of Criminal Procedure. The motion to dismiss was denied. On appeal he asserts that all three of the counts are defective in using the words "to the effect that" in charging the falsity of the statement involved in each count. As to count I the failure to raise the alleged defect by pre-trial motion constituted a waiver.[3] Since the appellant was given a five year sentence on each count, all to run concurrently, he would gain nothing, even if counts I and II were held to be "defectively" stated. But plainly they were not. Count I is set forth in full in the margin.[4] Count II, based on the letter of April 4,

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[3] See Rule 12(b)(2), F. R. Cr. P.; *Dunbar* v. *United States*, 156 U. S. 185, at 191-2.

[4] "On or about December 26, 1951 at the Southern District of New York, James W. Miller, the defendant herein, in a matter within the jurisdiction of a department of the United States, namely, the Fiscal Service of the United States Treasury Department, did unlawfully, wilfully and knowingly make a false and fraudulent statement as to a material fact to the effect that a quantity of bonds in the names of members of the Nat Chernoff family were properly cashed in accordance with procedures laid down by circular letter of the United States Treasury Department, whereas in truth and in fact as the defendant then and there well knew, the said bonds were not properly cashed in accordance with procedures laid down by the said circular letter. (Title 18, Section 1001, United States Code)."

1952, makes substantially the same charge.[5] Each of the counts is a good illustration of the simplified pleading required by Rule 7(c) of the Federal Rules of Criminal Procedure. It is sufficient to enable the defendant to understand the nature of the accusation, to give him the needed information to prepare his defense, and to make it possible for him to plead the judgment in bar of another prosecution for the same offense should occasion for doing so arise. That is all that is required of an indictment, as this court has often held.[6]

Interrelated with the claimed insufficiency of the indictment are claims of fatal variance between allegations and proof under Counts I and II, and of errors in the court's charge with respect to these counts. Each count charged that the defendant made a false statement to the effect that the bonds were properly cashed.[7] The proof adduced to establish the charges were letters written by the defendant dated respectively December 26, 1951 and April 4, 1952. The pertinent part of the December letter stated:

> "At the time the investigation was made by your Department *we were informed* [italics added] that the bonds were properly cashed in accordance with procedure laid down in your official circular and consequently no claim would be made against us."

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[5] Count III, based on the letter of June 4, 1952 charges the making of a false and fraudulent statement "to the effect that one Irving Mishel introduced a person to the defendant, James W. Miller, as Mr. Chernoff, whereas in truth and in fact as the defendant then and there well knew, he did not introduce any person to the defendant as Mr. Chernoff."

[6] See *United States* v. *Josephson*, 2 Cir., 165 F. 2d 82, 85, cert. denied 333 U. S. 838, and cases there cited.

[7] See note 4, *supra*.

Opinion of the Court of Appeals Affirming the Judgment of the District Court

The April letter said:

> "We regret that you are insisting on reimbursement because *we feel* [italics added] that these bonds were cashed in good faith and within the meaning, letter and spirit of Paragraph 4 of the Treasury Department in a circular covering such redemptions dated December 19, 1947."

Because of the italicized words in the letters above quoted the appellant contends that the proof failed to establish the accusation charged in counts I and II, respectively. The contention of a fatal variance is preposterous. The indictment did not purport to state the exact words of the false statement but it plainly stated the substance of the accusation. The defendant claimed no surprise when the letters were offered and made no objection to their admission. The governing rule is stated in *Berger* v. *United States*, 295 U. S. 78, 82. Within the meaning of that rule the accused was definitely informed as to the charges against him; he was not taken by surprise and he is protected against another prosecution for the same offense.

Apparently no exception was taken to the portion of the court's charge as to counts I and II, which the appellant now claims was erroneous and must have confused the jury. Nevertheless, we have carefully examined the charge and think it correctly advised the jury as to what they must find to convict the defendant under counts I and II.

With respect to count III the appellant asserts error in the charge and in permitting the Government to use hearsay evidence. Under this count the issue was whether or not Mishel introduced anyone to Miller as Chernoff.[8] The portion of the court's charge to which objection was made

[8] See note 5, *supra*.

is set forth in the margin.[9] The tellers testified that when they cashed the bonds they saw Miller at his desk and no one was with him except Mishel. On cross-examination each teller admitted that he did not know whether Mishel came into the bank alone or with someone else who might have been introduced to Miller and left before they saw Mishel and Miller at the latter's desk. The appellant complains that the quoted charge leaves the impression that the tellers corroborated Mishel. We do not so read it. The words "at that time" refer to the time when the bonds were cashed, not to the time of the claimed introduction. The trial judge was merely summarizing some of the evidence and he repeatedly cautioned the jury that their recollection of the facts, not his, was controlling. We see no error in the charge.

On the several occasions when the bonds were cashed, they were taken by a bank guard named Kennedy, who died before the trial, from Miller to a teller who cashed them and gave Kennedy the money to take back to Miller. The three tellers were permitted, over the defendant's objection, to testify as to conversations with Kennedy regarding messages to them from Miller. This testimony was properly admitted as being within an exception to the hearsay rule, namely, that statements made by an agent within the scope of his authority are admissible

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9 "Now, that gets us to one of the heart questions, whether in fact Mishel introduced a person to the defendant at the time the bonds were cashed as Chernoff or whether he did not. The defendant claims that he did, and he has testified that he did. The prosecution claims that he did not, and in that course they have submitted Mishel as a witness and they have produced the tellers who claim to have seen who was at Mr. Miller's desk at that time. You have heard their testimony in that regard."

against his principal.[10] Kennedy was Miller's agent to deliver the bonds and return with the money. While it is true that the agency cannot be proved by the hearsay statements of the alleged agent himself, there was ample competent evidence to establish the agency-principal relationship between Kennedy and Miller.

Complaint is made that the cross-examination of the Government's witness Mishel was unduly limited. We see no basis for such complaint. On the contrary the record shows that the defendant was permitted extraordinary latitude in his cross-examination. Attempts to bring out that Mishel had duped officers of other banks had no probative value on the issues in this case and were properly checked. The court also properly prohibited independent proof, other than the defendant's own denial, to contradict Mishel's testimony on cross-examination as to collateral matters; for example, his statement about a safety deposit box of which he had joint control with Miller.[11] In the matter of cross-examination the trial judge has wide discretion and we see nothing to indicate that his discretion was abused.

Finally it is urged that improper cross-examination of the defendant constituted reversible error. On his direct examination the defendant related in detail the story of his life from boyhood on, telling of his hard work, his rapid promotion in the banking business, his unblemished career and his numerous civic honors and public services.

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[10] *United States* v. *S. B. Penick & Co.*, 2 Cir., 136 F. 2d 413, 416; *United States* v. *Perillo*, 2 Cir., 164 F. 2d 645, 647; *Las Vegas Merchant Plumbers Ass'n* v. *United States*, 9 Cir., 210 F. 2d 732, 751, cert. denied 348 U. S. 817; 4 Wigmore, Evidence 3rd Ed., §1078.

[11] See *Smith* v. *United States*, 9 Cir., 10 F. 2d 787, 788.

Opinion of the Court of Appeals Affirming the Judgment of the District Court

Thus he placed in issue his character.[12] The cross-examination sought to demolish the claims he had voluntarily asserted. The allegedly improper questions related to the subject matter of his own direct examination. To only one of the whole series of questions did he make objection. We think no reversible error was committed.

Judgment affirmed.

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[12] *United States* v. *Silver*, 2 Cir., 235 F. 2d 375, 378, cert. denied 352 U. S. 880; *United States* v. *Pagano*, 2 Cir., 224 F. 2d 682, 686, cert. denied 350 U. S. 884.

Judgment of the Court of Appeals

UNITED STATES COURT OF APPEALS

FOR THE

SECOND CIRCUIT

At a Stated Term of the United States Court of Appeals, in and for the Second Circuit, held at the United States Courthouse in the City of New York, on the 10th day of July one thousand nine hundred and fifty-seven.

Present:

HON. CHARLES E. CLARK,
Chief Judge

HON. THOMAS W. SWAN
HON. WALTER L. POPE
Circuit Judges.

UNITED STATES
Plaintiff-Appellee

v.

JAMES W. MILLER
Defendant-Appellant

Appeal from the United States District Court for the Southern District of New York.

This cause came on to be heard on the transcript of record from the United States District Court for the Southern District of New York, and was argued by counsel.

ON CONSIDERATION WHEREOF, it is now hereby ordered, adjudged, and decreed that the judgment of said District Court be and it hereby is affirmed.

A. DANIEL FUSARO
Clerk

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JOHN T. FEY, Clerk

IN THE

Supreme Court of the United States

OCTOBER TERM, 1957

No. 581

JAMES W. MILLER,

Petitioner,

—against—

UNITED STATES OF AMERICA,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

PETITIONER'S REPLY BRIEF

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INDEX

PAGE

Preliminary Statement 1

Argument 2

POINT ONE—The Solicitor General's Confession of Error in the *Scales* and *Lightfoot* cases is inconsistent with his position taken in the instant case and, at all events, the decisions in those cases, as well as in *Jencks*, require that this case be remanded for a new trial .. 2

POINT TWO—The record adequately raises the question of whether the evidence is sufficient to sustain the indictment 16

POINT THREE—The question of the propriety of the cross-examination is unanswered by the Government's brief 17

Conclusion 22

TABLE OF CASES CITED

Agoston v. *Pennsylvania*, 340 U. S. 844 21

Casey v. *United States*, 343 U. S. 808 9

Eschcat v. *United States*, 188 F. 2d 336 (8th Cir. 1951) 19

Gordon v. *United States*, 196 F. 2d 886, 344 U. S. 414 (1952) 12, 14, 15

Kotteakos v. *United States*, 328 U. S. 750 14

PAGE

Lightfoot, Claude Mack v. *United States*, 228 F. 2d 861, C. C. A. 7th, certiorari granted 350 U. S. 992, reargument granted 353 U. S. 979, October Term, No. 3, 354 U. S. —, 1, 2, 3, 4, 6, 7, 8, 9, 10, 22

Maryland v. *Baltimore Radio Show*, 338 U. S. 912 20

Provo v. *United States*, 215 Fed. 2nd 531 19

Scales, Junius Mack v. *United States*, 227 F. 2d 581, C. C. A. 4th, certiorari granted 350 U. S. 992, reargument granted 353 U. S. 979, October Term, No. 3, 354 U. S. —, 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 22

Young v. *United States*, 315 U. S. 257 (1914) ..6, 9, 10

United States v. *Killian*, 246 F. 2d 77 (7th Cir. 1957) 10, 11

United States v. *Rosenberg*, 245 F. 2d 870 (3rd Cir. 1957) 10

OTHER AUTHORITIES CITED

18 U. S. C. §1001 17

18 U. S. C., §3500, as added by Public Law 85-269, 85th Cong. 1st Sess. 22

Mann (White Slave) Act 19

IN THE

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OCTOBER TERM, 1957

No. 581

JAMES W. MILLER,

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—against—

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Respondent.

PETITIONER'S REPLY BRIEF

Preliminary Statement

(1)

The main purpose of this reply brief is to call the court's attention to the fundamental inconsistency between the position taken by the Solicitor General in his brief in this case, as to the *Jencks* case issue, as contrasted with the position taken by him on the identical issue in two cases at this same Term in which, on the basis of *Jencks*, he confessed reversible error (*Scales* v. *United States* and *Lightfoot* v. *United States,* which were respectively Nos. 3 and 4 at the October 1957 Term). Partly, if not solely, on the basis of the Solicitor General's concession of error, this court remanded *Scales* and *Lightfoot* to the District Court for a new trial (*Scales* v. *United States* and *Lightfoot* v. *United States,* 354 U. S. —, October 8, 1957; see, post p. 4 for full text of decisions).

(2)

A subsidiary purpose of this reply is to call attention to several basic fallacies in the arguments advanced in opposition to the granting of the petition herein.

ARGUMENT

POINT ONE

The Solicitor General's Confession of Error in the *Scales* and *Lightfoot* cases is inconsistent with his position taken in the instant case and, at all events, the decisions in those cases, as well as in *Jencks*, require that this case be remanded for a new trial.

(1)

In his brief in opposition in the instant case (Government's Brief, p. 17), the Solicitor General attempts to meet the issue of the *Jencks* decision, as advanced by the petitioner (Pet. pp. 25-29), on two grounds, viz., (1) that the *Jencks* case is inapposite because in it the trial judge refused to examine the prior statement of the witness whereas here, he did, and (2) at all events, the trial judge's refusal to turn over the relevant portions of the prior statement to the defense in this case was merely "harmless" error (Government's Brief, p. 17).

We shall meet the foregoing two opposition arguments head-on hereafter (post pp. 5-14). First, however, we want to point out and document the

proposition that the Solicitor General's position on the *Jencks* case issue in this case is diametrically opposed to the position taken by him on the same issue in the *Scales* and *Lightfoot* cases recently (October 8, 1957) passed upon by this court.

The cases of *Junius Irving Scales* v. *United States* and *Claude Mack Lightfoot* v. *United States,* were originally Numbers 29 and 32 on the October 1956 Term of this court. The Court of Appeals decisions in the respective cases were reported below: *Scales,* 227 F. 2d 581, C. C. A. 4th; *Lightfoot,* 228 F. 2d 861, C. C. A. 7th. This court granted certiorari in both cases the same day and the decisions are reported at the same page of the report (350 U. S. 992). By an order made June 3, 1957, re-argument in both cases was ordered (353 U. S. 979). Thereafter the cases were designated as Nos. 3 and 4 on the docket for the October 1957 Term.

On the re-argument, the Solicitor General submitted a brief, entitled in both cases, and dated September 1957 and styled "Supplemental Memorandum for the United States on Reargument". In the opening paragraph of that brief the Solicitor General *confessed error* in *both* cases based upon this court's decision in *Jencks* and he conceded that new trials had to be granted in both cases. We quote the exact language of the Solicitor General's confession of error from the opening paragraph of his supplemental memorandum:

> "A. Each of these cases involves, inter alia, substantially the same production-of-documents issue which was raised and decided in *Jencks* v. *United States,* 353 U. S. 657. See Brief for the

United States in *Scales*, No. 29, Oct. Term 1956, pp. 74-77; Brief for the United States in *Lightfoot*, No. 32, Oct. Term, 1956, pp. 38-40. Each case, accordingly, must be reversed for further proceedings in the light of the *Jencks* decision. On the retrial, if the same witnesses are called by the Government and demand is made for production of their written statements to the F. B. I., the procedure will presumably be that directed by new Section 3500 of Title 18 of the United States Code, as added by Public Law 85–269, 85th Cong., 1st Sess., approved on September 2, 1957."

On October 8, 1957 this court, based partly upon the concession of error thus made, and partly upon a consideration of the entire record in each case, reversed both cases and remanded them for new trials. The full text of this court's decision in *Scales* reads as follows (and the decision in *Lightfoot* is in the same language):

"*Scales* v. *United States*—October 8, 1957 Per Curiam: Upon consideration of the entire record and the confession of error by the Solicitor General, the judgment of the United States Court of Appeals for the Fourth Circuit is reversed. Jencks v. United States, 353 U. S. 657".

Petitioner proposes to demonstrate that the Solicitor General's concession of error in the *Scales* and *Lightfoot* cases is wholly inconsistent with his position in the instant case. It will also be argued that this court's decisions in those two cases are binding "precedents" which should, in addition to *Jencks*, mandate not only granting certiorari herein, but an ultimate direction of a new trial of the instant case.

Indeed, as we see it, the decision of the court below so clearly violates Jencks, that not only should certiorari be granted, but by an appropriate simultaneous miscellaneous order, a direction for a new trial should me made, without the necessity of the case being added to this court's docket and further briefed and argued.

Factually, the production-of-documents issue was raised in the *Scales* case, in the identical way in which it was presented in the instant case. The Court of Appeals decision in the *Scales* case is reported at 227 F. 2nd 581 and a reading of the opinion therein discloses exactly the manner in which the issue was raised there. On the argument in the Court of Appeals, the defendant claimed it was reversible error for the trial judge to refuse to turn over to defense counsel F. B. I. reports and prior written statements made by two government witnesses identified by names as Clontz and Childs. The trial judge had examined the statements and, after such examination, reached the conclusion that there was nothing in them which was contradictory of the witnesses' testimony and, therefore, declined to make them available to the defense counsel. This is exactly what occurred in the instant case with respect to the Mishel "master" statement, except that here, the trial judge's conclusion was that there was no "material inconsistency", rather than the flat finding of "nothing contradictory" as was made by the trial judge in *Scales* because, in our case, there is a finding of at least *some* inconsistency. (See, Petition pp. 22, 25-29). If anything, therefore, this is a stronger case for the production of the documents than was *Scales*. That we have correctly recited the factual setting under which the issue was raised in *Scales* is indicated by the quotation of a single sentence

of the Court of Appeals opinion in *Scales* in which it was said (227 F. 2nd 581, 592):

> "As to the F. B. I. reports on the statements of Clontz and Childs, there was no suggestion that they contained anything contradictory of testimony given by these witnesses on the trial, *and the trial judge, who examined the statements, held that there was nothing in them contradictory of that testimony*" (emphasis added).

The printed transcript of the record in the *Scales* case also serves to document our assertion that, in that case, the trial judge examined the statements *in camera* and concluded that they were not contradictory (See, Record in *Scales*, p. 96; also, petitioner's brief in *Scales* in this court, dated August 24, 1956, pp. 43, 44).

If a "confession of error" was justified in *Scales*, therefore, it was equally warranted in the instant case—because, in this case, the identical issue was presented in exactly the same way. Factually, the two cases on the issue in question are as indistinguishable as two peas in a pod.

In frankly confessing error in the *Scales* and *Lightfoot* cases on the basis of *Jencks*, we believe the Solicitor General was not only right, but that his commendable candor is entitled to some professional accolade. His action there was in accordance with the best traditions of the bar. As this court on one occasion said of a similar confession of error (*Young v. United States*, 315 U. S. 257, 258):

> "The public trust reposed in the law enforcement officers of the Government requires that they be quick to confess error when, in their opinion, a miscarriage of justice may result from their remaining silent".

The concessions of error made in *Scales* and *Lightfoot* were undoubtedly made by him in entire good faith and in accordance with what he considered to be his duty as a responsible public official.

But why the Solicitor General, out of the same sense of duty, failed to make the same concession of error in the factually identical instant case, remains a complete mystery. Instead, in his brief in opposition here (Government's brief, p. 17), he takes the completely inconsistent and untenable position that the *Jencks* case is not controlling because in *Jencks,* the trial judge did not examine the prior statements, whereas in the instant case, the judge did examine them. The alleged distinction is merely a verbal *tour de force.* Strangely enough, the Solicitor General omits from his brief in opposition *any* reference to *Scales* or *Lightfoot.* As already pointed out, the issue was presented in *Scales* in exactly the same way as it was here. In *both* cases (*Scales* and the instant one), the trial judges examined the statements and in *both* cases they concluded that there was no inconsistency or contradiction between the statements and the testimony. If this was admittedly error in *Scales,* and we agree that it was, then the same admission is called for here. And there is further inconsistency in the Solicitor General's present argument (Government's brief in opposition, p. 17) that the factual difference between *Jencks* and the instant case has significance. His confessions in the two cases (*Scales* and *Lightfoot*) that both, despite the same factual differences between them, were governed by *Jencks* cannot be reconciled with his present argument. Actually, of course, there is no substance whatever to the alleged distinction. It is merely a distinction without a difference. The gravamen of the *Jencks*

case is that a defendant in a criminal case is entitled to have delivered to him for his inspection prior statements of a witness against him, once it is established that such statements relate to the testimony of the witness (353 U. S. 657, 669). Indeed, in its opinion this court pointed out (p. 669):

> "The practice of producing government documents to the trial judge for his determination of relevancy and materiality . . . is disapproved."

Thus, as we read *Jencks*, it is utterly and completely immaterial whether or not the trial judge examined the statements or made any determination as to whether or not they should be turned over to the defendant. Until inspection by the defense, the trial judge has no role to play. The essence of *Jencks* is that, once a proper foundation is laid, the prior statements must be delivered to the defense for its inspection. Unless that is done, reversible error is committed.

The fundamental inconsistency of making confessions of error, on the basis of *Jencks,* in the *Scales* and *Lightfoot* cases, and in failing to do the same thing in the factually identical instant case, is so flagrantly incongruous that we believe that the Solicitor General owes this court, and the petitioner, a full and complete explanation of his illogical conduct. Should he decline to make such an explanation voluntarily, an appropriate order of this court should be made requiring it. On the one hand, if he erred in confessing error in *Scales* and *Lightfoot,* then he should now frankly confess his own error. On the other hand, if he now recognizes that a confession of error should also have been made in the instant case,

that fact, too, should be candidly conceded. Of course, if he feels that his diverse positions are actually reconcilable, then he ought to be permitted to explain how, logically, they can be harmonized. But, at all events, some explanation is called for.

This court, on numerous occasions, has considered the effect of a "confession of error" and its significance. While it is generally recognized that such a confession is to be given considerable weight, nevertheless such a stipulation does not relieve this court of its duty to examine independently the errors confessed (*Young* v. *United States,* 315 U. S. 257, 258, 259, 1941). And on some occasions this court has not felt bound by the confession (See cases cited in *Casey* v. *United States,* 343 U. S. 808, 810). The settled practice in this court at the present time, in the rare cases where confessions of error are made, is to be extremely "careful to note that our [this court's] reversal of a court of appeals judgment is based upon consideration of the record, not blind acceptance of a confession of error" (*Casey* v. *United States,* 343 U. S. 808, 810). Consistent with this now well established practice, this court in its decisions of reversal in the *Scales* and *Lightfoot* cases, was careful to note that the decisions of reversal were made "Upon consideration of the entire record and the confession of error" (See *Scales* decision, ante, p. 4).

The prevailing practice of reviewing the entire record in confession of error cases, make the decisions rendered thereon, *stare decisis,* though partly based on the confessions of error. As once said in such a case ". . . our judgments [in confession of error

cases] are precedents . . ." (*Young* v. *United States*, 315 U. S. 257, 259).

Thus, it can be authoritatively said that this court's decisions in *Scales* and *Lightfoot* are as much "precedents" in this case as is *Jencks*. Under the authority of all three cases, certiorari should be granted herein.

(3)

Two Court of Appeals cases decided since *Jencks* afford additional authority for the proposition that reversible error was committed in denying the defense the right to inspect the prior statements of the government witnesses Mishel and Sershen. These cases are *United States* v. *Rosenberg*, 245 F. 2d 870 (3rd Cir. 1957) and *United States* v. *Killian*, 246 F. 2d 77 (7th Cir. 1957). In *Rosenberg*, the trial judge *in camera* inspected the grand jury testimony and a prior statement of a government witness given to the F. B. I., and while he (the trial judge) orally indicated to defense counsel the discrepancies between the grand jury testimony, and the written statements as against the trial testimony, he refused to turn them over to the defense. The Court of Appeals held this to be such reversible error under *Jencks* that it "compels us [the court] to grant a new trial" (245 F. 2d 870, 871). In the *Killian* case the trial judge refused to compel the production of a prior written report of a government witness covering the subject-matter of his testimony. On appeal to the Court of Appeals this was claimed to be reversible error. The original decision of the Court of Appeals was rendered on June 10, 1957, exactly one week after *Jencks* was decided. On the original decision the court affirmed, holding that the

trial judge had not abused his discretion in refusing to compel the production of the statement. The defendant, however, filed a petition for rehearing based on *Jencks*, which is exactly the same procedure followed by the defendant here. Unlike the Second Circuit's decision on rehearing in the instant case (See Appendix to Petition, App. 1-App. 5), the Seventh Circuit in the *Killian* case unanimously reversed itself and ordered a new trial on the basis of *Jencks*. Its decision on the rehearing is appended to the original contrary decision and is reported at 246 F. 2d 82.

(4)

In a further effort to defeat the application of the *Jencks* case, the Solicitor General seeks to argue that the denial of the inspection of the prior reports of government witnesses was mere "harmless" error and cites his own argument in *Sheba Bracelets* v. *United States* as his authority (Government's brief, p. 11). The same argument, based on the same case, was advanced in the Court of Appeals, but even that court failed to place any reliance on *Sheba* or to give the question, as presented in this case, the "harmless error" treatment (App. 1-App. 5). Actually, the *Sheba* case is so far afield of the instant one that we need not labor the point that it is inapposite. We fully argued the point in the Court of Appeals (See, Defendant's reply brief below on petition for rehearing, pp. 93a-98a).

The instant case simply will not lend itself to the "harmless error" treatment. The Mishel testimony was too vital to the government's case. Here, the three letters upon which the indictment was founded had their genesis in the sale of government bonds.

Only three persons were present when the sale took place, viz., Mishel, Rosenberg and the defendant Miller. Only Mishel and Miller testified at the trial regarding the full transaction and their testimony was diametrically opposed (Petition, pp. 19-21). Thus, Mishel was, in every sense of the word, a "crucial" government witness upon whom its case depended. The Court of Appeals (App. 2) characterized him as "An important witness for the prosecution . . .". This court has observed that where "the Government's case may stand or fall on the jury's belief or disbelief of one witness, his credibility is subject to close scrutiny" (*Gordon* v. *United States,* 344 U. S. 414, 417). This case, indeed, was such a case and because of this fact the production and inspection of the fifty-page "master" statement of Mishel was vital to the defendant's case. In refusing to permit an inspection, the trial judge based his refusal upon his own finding that it contained "no *material* inconsistency that would be worthy of our attention" (369a). The two qualifications interpolated by the trial judge i. e. the materiality and worthiness of the inconsistencies, definitely indicates that there were, concededly, "inconsistencies" between the statement and the testimony.

In deciding the *Jencks* case, this court pointed out that the defense and not the trial judge is best equipped to determine the impeachment value of a prior statement and it added (353 U. S. 657, 668, 669):

> "Because *only the defense* is adequately equipped to determine the effective use for purpose of discrediting the Government's witness and thereby furthering the accused's defense, the defense must

> initially be entitled to see them to determine what use may be made of them. Justice requires no less."

And this court, earlier in its opinion, had indicated that there were many factors, other than flat contradiction, to be considered in arriving at the impeachment value of such a statement. On this subject, this court said (353 U. S. 657, 667):

> "Flat contradiction between the witness' testimony and the version of the events given in his reports is not the only test of inconsistency. The omission from the reports of facts related at the trial, or a contrast in emphasis upon the same facts, even a different order of treatment, are also relevant to the cross-examining process of testing the credibility of a witness' trial testimony".

What criteria was used by Judge Walsh in arriving at his conclusions as to the "materiality" or the "worthiness" of the inconsistencies between the Mishel "master" statement and the testimony we do not know (369a). Mishel himself, however, when asked whether everything covered by his testimony was included in the "master" statement, answered (230a):

> "There could be some isn't, some is; I don't know".

And he freely admitted making many other additional statements which added many facts not embraced in the "master" statement (207a, 208a). Although the defense demanded all such prior statements (246a) none but the "master" and the state-

ment of February 28, 1955 were produced—and no inspection of the "master" was permitted. Nor was any use of the other allowed (Petition, pp. 22-24).

On such a record, we fail to see how the Government can seriously argue that such errors were "harmless". What is, and what is not, "harmless error" may, in some cases, be difficult to decide (Cf. *Kotteakos* v. *United States,* 328 U. S. 750, 764, 765). But there is no basis for hesitancy here. Indeed, the same harmless error argument was advanced by the Government and rejected by this court in *Gordon* v. *United States,* 344 U. S. 414 (1952), although it had been adopted by the court below in that case (196 F. 2d 886, 889). In that case, this court unanimously held that it was reversible error for the trial court to refuse to order the government to produce a prior statement of one of its key witnesses who had admitted that such prior statement was contradictory of his trial testimony. In support of its harmless error argument, the government contended that since the defendant had, on cross-examination of the witness in question, elicited an admission that his statement was contradictory of his testimony, the defendant had obtained the same impeachment value from the admission as he would obtain from the production of the statement itself. Thus, so it argued, the failure to require the production of the statement was merely "harmless error". This court summarily and unanimously rejected that argument and held that the error in failing to require the physical production of the statement was reversible and substantial error. In so doing it emphasized the

importance of the witness to the government's case and pointed out (344 U. S. 414, 421):

> "Except the testimony of this witness be believed, this conviction probably could not have been had".

We insist that the Mishel testimony in the instant case was of equivalent importance to the government in the instant case as was the testimony of the witness involved in *Gordon*. In this case, as was true of the witness' testimony in *Gordon*, unless Mishel's testimony be believed, this conviction probably could not have been had. For that reason, the failure to permit defense counsel in the instant case to either inspect the Mishel "master" statement, or to make any use before the jury of his other statement, was substantial and reversible error.

(5)

In dealing with the prior statement of the witness Sershen, the government in its brief in opposition (pp. 17, 18) makes a factual statement quite contrary to the record. At page 18 the flat statement is made that "no request was ever made for its (Sershen's additional report) production". This categorical statement by the Solicitor General must have been made inadvertently—because it is directly contrary to the record. At pages 246a and 247a of the record, the defense counsel applied for (1) the prior statements of the witness Mishel (2) the statements in the possession of the F. B. I. and (3) those of the Secret Service. The request for the Secret Service reports is recorded in the third and fourth lines of page 247a of the record. The Solicitor General to

the contrary notwithstanding (Government's Brief, p. 18), there is, therefore, definite merit under *Jencks* for the point that the failure to order the production, or to permit an inspection of the "additional" Sershen report, was reversible error, wholly aside from the issue of the Mishel statements.

POINT TWO

The record adequately raises the question of whether the evidence is sufficient to sustain the indictment.

The broad basis upon which the defense moved at the close of the government's case (479a-484a) and at the end of the entire case (802a, 803a) for judgment of acquittal, was certainly adequate to pose the question of whether the writing of the three innocuous letters upon which the indictment is based constituted indictable offenses under the statute here involved. The Solicitor General in his opposition brief (Government's brief, p. 12) states that this question is being raised for the first time in this court. We do not, of course, agree. But even assuming, *arguendo*, this to be true, that does not preclude this court from considering the question—because it is always open. Assuming that the defendant had been convicted under the same statute for writing three "mash" notes to a government Secretary and his counsel had not argued, until the case got to this court, the question of the sufficiency of the evidence under the indictment, would this court be foreclosed from considering the question? The answer is obvious.

We do not feel that the government's brief in opposition (pp. 12, 13), in any degree, meets the contentions posed under petitioner's question two (Petition, pp. 30-32). Not a single case is cited by the government—nor even an analogy made under decided cases—for the proposition that writing letters such as those here involved, in which a person gives a government agency his own version of a business transaction, can constitute the grave crime of violation of 18 U. S. C. §1001, where admittedly no conceivable injury to the government results therefrom. No attempt whatever is made to show that the statements made in any of the letters were of a "material fact" or that any of them "defrauded" or deceived the government or any of its agents or departments, or had any tendency to do so.

POINT THREE

The question of the propriety of the cross-examination is unanswered by the Government's brief.

(1)

As a preliminary to our discussion of the cross-examination issue, we want to take sharp issue with the Solicitor General's statement at the bottom of page 20 of his brief. There he makes the following statement:

> "There is no suggestion that government counsel did not have reason to believe that the events asked about [on cross examination] had happened and that truthful answers would have confirmed their existence".

We do not know what the Solicitor General's definition of a "suggestion" is—but apparently it does not accord with ours. In the petition (p. 33), we recapitulated all the improper questions which were asked on cross examination by the prosecutor. We then said (beginning at bottom of p. 33 and ending, p. 34):

> "There was not a scintilla of evidence in the case of any of the acts of misconduct which were insinuated by the foregoing questions".

That is a direct assertion and not a mere "suggestion" of the complete lack of any basis for asking any of the questions. And we stand on the statement. We go further. We reiterate that government counsel had no valid reason to believe that any of his insinuating questions would elicit an affirmative answer. His oblique implication in the statement quoted from the government's brief, supra, that truthful answers to the questions would have confirmed the matters covered by the interrogation is completely gratuitous, unfounded and unsupported.

(2)

The issue posed by petitioner's question three (petition, pp. 32-39) as to the impropriety of the line of cross-examination to which the petitioner was subjected, is neither adequately nor partially answered by the government's brief. In the petition we cited fourteen cases from all the circuits which, with impressive unanimity, establish the proposition that the government, in a criminal case, must limit its cross-examination of the defendant to those collateral matters as to which the defendant has been convicted for felony

or for misdemeanor involving moral turpitude (petition, pp. 37-39). The government completely fails to meet those cases, or that argument (Government's brief, pp. 18-20). It simply passes over them, *sub silentio*. Merely because a defendant takes the stand in a criminal case does not, under the unanimous Federal rule, subject him to any line of collateral attack which the government may level at him. Of course, every defendant who takes the stand wants to present himself in the best possible light before the jury. In the *Provo* case, the staff sergeant who testified in his own behalf undoubtedly wanted to picture himself as a good soldier who would not engage in conduct unbecoming a member of the armed forces. And presumably he did his best to appear in that role. When the government in the *Provo* case sought to demolish this good impression by asking the defendant on his cross-examination about his alleged homosexual abberrations—it could as well argue there that its inquiry was only for the purpose of impeaching the good impression the defendant sought to make on his direct examination. That, in substance is the gist of its argument here. But its single question about homosexuality, in the *Provo* case, despite the government's objective in asking it, was held to constitute reversible error. This holding was made, peculiarly enough, by the Second Circuit (*Provo* v. *United States*, 215 Fed. 2nd 531). It was in complete accord, however, with all the other circuits (petition, pp. 37-39). The same rationale, as that presently urged here, could have been advanced by the government in *Escheat* v. *United States*, 188 F. 2d 336 (8th Cir. 1951) as justification for its line of cross examination there. There, several defendants were convicted for a violation of the Mann (White Slave) Act.

At the trial one defendant had been cross-examined as to certain arrests and another as to previous marriages and divorces, all of which tended to destroy the good impressions which the defendants had sought to make on their direct examination. The Court of Appeals reversed the convictions, however, because of the impropriety, under the Federal rule, of the questions asked on cross-examination. We could analyze all the other cases cited in the petition on the point and they would all indicate that the sole purpose of the prosecutor in each case in asking the objectionable question on cross-examination was to try to destroy the favorable impression made by the defendant in his testimony on direct examination. All the cases hold the questions to be reversible error, and regardless of the government's alleged objective or purpose.

The only authority which the government in its brief cites as justification for the cross-examination in the instant case is the *Pagano* case (Government's brief, p. 20). Obliquely, it cites this court's denial of certiorari in the *Pagano* case as if, from that denial, some inference could be drawn that this court approved either the decision or the reasoning of the Second Circuit Court of Appeals in affirming Pagano's conviction. Surely, the Solicitor General of the United States knows, or should know, that no such inference of approval is warranted by the denial of certiorari.

With great positiveness this court has said that its denial of certiorari "does not remotely imply approval or disapproval of what was said by the Court of Appeals" (*Maryland* v. *Baltimore Radio Show*, 338 U. S. 912, 919, per Frankfurter, J.) Or, as it

was alternatively stated in the same case at the same page, "the denial of certiorari carries with it no implication whatever regarding the Court's views on the merits of a case which it declines to review". Indeed, the misconceptions of the effect of a denial of certiorari were so general, that this court has found it necessary to frequently reiterate the proposition that the denial of certiorari carries with it "no support of the decision" sought to be reviewed (*Agoston* v. *Pennsylvania,* 340 U. S. 844, 845.

In view of the foregoing decisions, we can say, with absolute certainty, that the denial of certiorari in the *Pagano* case, in no way implies, directly or indirectly, any approval by this court, of the reasoning or holding of the Second Circuit Court of Appeals in that case. The *Pagano* case must stand, therefore, as simply a holding of the Second Circuit Court of Appeals which is out of line with its own holding in the *Provo* case and with all the cases in the other circuits cited in the petition (pp. 37-39). In advancing the *Pagano* case as his sole authority justifying the cross-examination here, the Solicitor General is really engaging in some form of circular reasoning. In effect he is citing as authoritative in the court of last resort, a decision of an intermediate court in one case for another decision made by the same court in another. To put it another way, it is the equivalent of arguing in the Supreme Court that the Second Circuit Court of Appeals is right in the instant case because the Second Circuit Court of Appeals, in another case, said it was right. We think the Solicitor General might, more logically, have argued, that the decisions from all the other

circuits cited in the petition (pp. 37-39) were erroneously decided. But, he did not choose to do that. At all events, we submit that no adequate answer has been given to the point of the impropriety of the line of cross-examination which was allowed here.

Conclusion

This case is a proper case for granting certiorari because:

(a) It (the decision below) is out of line with *Jencks, Scales,* and *Lightfoot* on the issue of requiring the production and inspection of prior statements of government witnesses on the subject matter of their testimony. This single issue, *per se,* is of such great public interest that it presents a proper case for the allowance of certiorari. The *Jencks* decision has been the subject of wide discussion among the bench, bar, the press, the legislative and executive branches of the government and the public generally. As a result of it, Congress enacted the new Section 3500 of Title 18 of the U. S. Code, as added by Public Law 85-269, 85th Cong. 1st Sess. It was approved by the President on September 2, 1957. The new law enacts, as a matter of national legislation, the essence of this Court's decision in *Jencks;*

(b) The dearth, or complete lack of authority on the issue of whether the writing of such letters to a public agency as those here involved, constitute *grave* crimes under Federal law, poses an important Federal question of such general concern, that certiorari should be allowed in order that the question may, in the

public interest, be passed upon by the court of last resort;

(c) The decision by the Court of Appeals in this case on the issue of the permissible scope of cross-examination of a defendant in a criminal case is contrary to the decisions of all the other Federal circuits and for the sake of uniformity of Federal law, certiorari should be allowed so that the issue can be authoritatively resolved.

A case presenting three such important questions of Federal law is certainly an appropriate one in which to allow certiorari.

Respectfully submitted,

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Dated, December 5th, 1957.

Office Supreme Court, U.S.
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No. 581

In the Supreme Court of the United States

OCTOBER TERM, 1957

JAMES W. MILLER, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

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INDEX

	Page
Opinion below	1
Jurisdiction	1
Questions presented	2
Statute involved	2
Statement	3
Argument	12
Conclusion	21

CITATIONS

Cases:	
Jencks v. *United States*, 353 U. S. 657	2, 17
Sheba Bracelets v. *United States*, No. 556, this Term	17
United States v. *Krulewitch*, 145 F. 2d 76	14
United States v. *Pagano*, 224 F. 2d 682, certiorari denied, 350 U. S. 884	20
Statute:	
18 U. S. C. 1001	2

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OPINION BELOW

The opinion of the Court of Appeals (Pet. App. 6) is reported at 246 F. 2d 486.

JURISDICTION

The judgment of the Court of Appeals was entered on July 10, 1957, and a petition for rehearing was denied on October 1, 1957. The petition for a writ of certiorari was filed on October 28, 1957. The jurisdiction of this Court is invoked under 28 U. S. C. 1254 (1).

QUESTIONS PRESENTED

1. Whether petitioner, who had directed the tellers in his bank on several different occasions to redeem certain stolen government bonds, thereafter violated 18 U. S. C. 1001 by making false statements to the Treasury Department as to the manner of such redemption in an effort to resist a claim for reimbursement.

2. Whether, in the circumstances of this case, where statements by two witnesses were turned over to defense counsel and one was examined by the court alone, the conviction should be reversed under the rule of *Jencks* v. *United States,* 353 U. S. 657.

3. Whether the trial court erred in allowing petitioner to be cross-examined as to his conduct of the banking business, where petitioner had gone into the matter extensively on direct examination.

STATUTE INVOLVED

18 U. S. C., Section 1001, provides:

> Whoever, in any matter within the jurisdiction of any department or agency of the United States knowingly and willfully falsifies, conceals or covers up by any trick, scheme, or device a material fact, or makes any false, fictitious or fraudulent statements or representations, or makes or uses any false writing or document knowing the same to contain any false, fictitious or fraudulent statement or entry, shall be fined not more than $10,000 or imprisoned not more than five years, or both.

STATEMENT

Petitioner was convicted in the District Court for the Southern District of New York on a three count indictment charging the making of false statements to the Treasury Department as to the cashing of certain United States Savings Bonds (R. 3–4).[1] He was sentenced to imprisonment for five years on each count, the sentences to run concurrently (R. 5). On appeal, the conviction was affirmed (Pet. App. 4).

The bonds involved in the case were fifty-nine United States Savings Bonds, of an aggregate value of $6,684.50, registered in the names of members of the Chernoff family, including three children under ten. They had been stolen from Mr. Chernoff's business premises in May 1946 (R. 10, 290; App. 21–22). They were cashed by the Pennsylvania Exchange Bank of which petitioner was president. The government's evidence was directed to proving that the bonds had, to petitioner's knowledge, been cashed by one Irving Mishel in violation of Treasury regulations with respect to identification (see App. 14–18) and hence that petitioner's letters to the Treasury Department, resisting a claim for reimbursement on the assertion that the bonds had been cashed by a person sufficiently identified as Chernoff, were knowingly false.

1. Irving Mishel was a witness for the government. He had a long criminal record and was currently in confinement (R. 19, 20). He said that in 1946 or

[1] Petitioner's appendix in the court below is designated as "R."; the government's appendix as "App."

1947 he was introduced to petitioner, the president of the Pennsylvania Exchange Bank, and Mr. William Gallagher (now deceased), Chairman of the Board (R. 22). Mishel opened up some "stiff accounts" (*i. e.*, accounts in fictitious names which were used in cashing checks for bookmakers and black marketers) with the full knowledge of petitioner. It was understood that Mishel and his associates were to pay $150 a month for each account, and close an account whenever petitioner directed (R. 23–26). Mishel made payment by sending money in an envelope to petitioner by various messengers, including Sam Siegel and Norton Schnabel (R. 26).[2]

In opening the "stiff accounts" Mishel took signature cards to petitioner with some checks he wanted to deposit and petitioner told him he would have to have some addresses on them. Mishel gave him the address of his cigar store for one and a place used to book horses for another (R. 27). The signature cards show "Introduced by JWM" (App. 3, 4; R. 28).[3]

Mishel met one Frank Pace and Irving Mickey Rosenberg about September 1949, the purpose being

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[2] Sam Siegel, who was on probation from a conviction for forgery, testified that, as an errand boy for Mishel from 1948 to 1950, he had brought sealed envelopes with money to petitioner three or four times (R. 430). Norton Schnabel, manager of the "Club Baby Grand," said he had worked for Mishel from about December 1949 to about March 1951, in various capacities and had delivered envelopes to petitioner about fifteen times, but did not feel he could say what was in them (R. 458–461).

[3] Sidney Hack, testifying for the government, said that he had signed the two signature cards at the request of Mishel and also signed checks in connection with these two accounts, but had never made any personal use of the accounts (R. 250–251).

to negotiate some stolen "E" bonds registered in the names of the Chernoff family (R. 20). About December of that year he took the bonds to Miller and asked to have them cashed (R. 29, 30). Petitioner told him he could, but he would have to have somebody sign them (R. 29). Mishel called Mickey Rosenberg, who came to his office the next morning and signed the bonds and some redemption slips which Miller had given him, in the name of Nat Chernoff (R. 31). Mishel took them to the office of petitioner who said they were not signed on the right line (R. 31). Mishel had Rosenberg, who was known to petitioner, come to the office and petitioner told him how to sign (R. 32).

When Mishel returned to get his money, petitioner gave him $840 on one bond, telling him that they could not all be cashed at once. It was agreed that petitioner was to receive ten percent and Mishel paid him $100 at that time (R. 34, 43–44). The bonds were cashed at eight different times between December 29, 1949, and February 20, 1950 (R. 34–36; App. 21–22). Mishel identified the bonds and the redemption forms (R. 39, 40; Govt. Exhs. 1-A through 8-A, App. 6–13). On three redemption forms (Exhibits 5A, 6A and 8A), the identification is printed "Thomas Young," the name of one of the "stiff accounts." This was done by Mickey Rosenberg at the suggestion of petitioner (R. 53–54). On Exhibit 8A the signature of David Chernoff was made either by Mishel or by Sam Siegel (R. 54).

Mishel would be in the bank and sit around while bonds were being cashed (R. 34). He gave money to petitioner either at the bank or at the Holland House

across the street (R. 34). One day petitioner had the bank guard take some of the bonds to Mr. Horan, one of the tellers, to have them cashed. Horan had them sent back because there was no identification with them. Petitioner had the guard take them back to Horan and tell him that he had said to cash them. Horan returned them again and petitioner said, "You tell Frank Horan that I said either he cash those bonds or go in the back and get his hat and coat and go home. I am still the boss here." This time the bonds were cashed (R. 37-39). This incident was corroborated by Francis Horan, Jr., a teller, who testified he refused to cash bonds in the name of Chernoff until the guard told him that petitioner had said, with some strong language, that Horan should mind his own business and do as he was told (R. 341). Horan said he put the redemption ticket with petitioner's initials in the desk and went to lunch and when he came back it was gone; that Government Exhibit 3A, which purports to cover this transaction, was not the original (R. 342).

Miss Graef was regularly the one who had charge of redeeming government bonds, but others filled in when she was away from her window (R. 340, 360). She and Horan (both of whom had left the bank at the time of trial), and James J. Lucey, Jr. (still employed by the bank at the time of trial), all testified that when a person unknown at the bank wished to cash bonds, the customary procedure was to send such a person to one of the officers of the bank, who would either initial the bonds or the redemption forms (R. 255, 339, 359–360). They testified that there was an un-

obstructed view from Miss Graef's window to Mr. Miller's desk (R. 255–256, 340, 360), a fact corroborated by an F. B. I. exhibits specialist (R. 11–18).

Virginia Graef testified that she cashed the Chernoff bonds five times (R. 256). The first time the guard brought some over for cashing she asked him where they came from and why they were not initialed (R. 256). He said that petitioner said to cash them. She looked over at Mr. Miller's desk and saw only Irving Mishel seated there talking with him. She cashed the bonds and the guard took the money back. Still no one was there but Mr. Mishel (R. 257). Nat Chernoff was never introduced (R. 259). She wrote "Miller" on one of the redemption slips (Govt. Exh. 2A), because he was the officer who had authorized the transaction (R. 259–260).

James J. Lucey, Jr., said that he filled in for Miss Graef on two occasions. The guard brought over some bonds in the name of Chernoff and said the boss had said to cash them, that it had been done before. Lucey looked in the bond register, saw that this was true and cashed the bonds, making a notation of petitioner's initials on the redemption slip. The next time he did the same. No one was at petitioner's desk but Mr. Mishel (R. 361–362). No one was introduced to him as David Chernoff, or Blanche Chernoff, nor anybody presented as Thomas Young, who appeared as the identification (R. 363).

2. In July 1950, the Treasury Department notified petitioner of the loss or theft of the Chernoff bonds, and requested that the bank assemble all known in-

formation for presentation to the Secret Service agent when he came (App. 19). Petitioner testified that he turned this over to the head teller, Mr. Wilmot, and told him to check into it. The latter reported back that he could not get any information from anybody in the bank or the records which would indicate how they were cashed (R. 616). The two tellers who were no longer with the bank, Miss Graef and Mr. Horan, testified that neither the bank officials nor their attorneys ever asked them for information as to the cashing of the bonds (R. 265, 343).

In August 1950, when two Secret Service agents questioned petitioner about the bonds, he said he knew nothing about the circumstances, that the tellers cashed the bonds (R. 465). In October, petitioner said he had been doing some thinking and Mishel had come in on two occasions. An individual was with him, who remained some distance away and who Mishel said was a friend named Chernoff. Mishel asked petitioner to cash some bonds for Chernoff, which petitioner did (R. 467). The agent asked petitioner how he came to accept the name of Thomas Young as identification and petitioner replied that he did not recall the exact transaction (R. 467). Petitioner said he had not talked with this other individual named Chernoff. The agent told petitioner it was obvious that he had not followed the Treasury Department regulations (R. 468).

On November 16, 1951, the Treasury wrote a letter to petitioner stating that investigation showed "(2) payment of the bonds was made to one Irving Mishel,

who was well known to you." The letter noted this was in violation of regulations and requested reimbursement in the amount of the bonds (App. 23–24). Petitioner replied on December 26, 1951 (App. 25), saying (par. 2):

> At the time the investigation was made by your Department we were informed that the bonds were properly cashed in accordance with procedure laid down in your official circular and consequently no claim would be made against us. We note the several matters listed in the second paragraph of your letter as being disclosed by your investigation, but call your attention to the fact that item (2) is incorrect according to the information that we have and which was given to and confirmed by your investigators.

The letter closed by saying that the bank should be relieved from liability (App. 26). This letter was the basis for Count One of the indictment.

The Treasury answered Miller's letter on February 5, 1952, stating that a careful review had been made of the case and full consideration given to petitioner's comments; that the statute permits the Treasury to give relief only when the loss occurred without fault or negligence of the paying agent; that investigation showed that the bonds were paid by the tellers at petitioner's instructions; that the proceeds were delivered to petitioner and in at least two instances he personally had handed the money to Mishel. The letter further stated that petitioner had told the investigating officer that the individual brought in as the purported owner remained at a distance and petitioner

did not meet him or attempt to identify him as the registered owner, nor was there any attempt to identify any one as the registered owner or co-owner. Therefore, reimbursement should be made as previously requested (App. 26–27).

Petitioner answered on April 4, 1952, with his second letter (App. 29), the basis of Count Two, in which he said (par. 2):

> We regret that you are insisting on reimbursement because we feel that these bonds were cashed in good faith and within the meaning, letter and spirit of Paragraph 4 of the Treasury Department's Circular covering such redemptions dated December 19, 1947.[1] When you originally called this matter to our attention we notified our bonding company, but subsequently informed them that the investigation made by your Department indicated that the bonds were properly cashed in accordance with the procedure laid down in your official circular as advised in our letter to you dated December 26, 1951.

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[1] Paragraph 4 of this Circular says that personal identification is not considered adequate when a paying agent accepts the bare statement of the identifier that he knows the person presenting the bond for payment. The paying agent should inquire as to the source and duration of the identifier's acquaintance and be satisfied therewith. The agent should also require the identifier to sign his name and address on the bonds or on a separate record, or the agent should make such record. The agent may imprint on the back of the bond a guarantee for the signature of the identifier, for its own protection. In case of loss the identifier will be expected to show a reasonable basis for his identification. In the absence of such basis, the agent will be considered to be at fault and will have to sustain the loss unless reimbursement can be obtained from the indentifier. (App. 17–18).

On May 13, 1952, petitioner sent a memorandum to Mr. I. Alfred Levy, of the law firm of Dorff and Levy, turning over the Chernoff file and requesting that he take the matter up with the Treasury Department "in an endeavor to make an adjustment" (App. 30–31). On May 21 petitioner received another request for reimbursement from the Treasury (App. 32) and forwarded it to Mr. Levy so that he could take it up with the Treasury "in an endeavor to make a settlement as suggested by us previously" (App. 31–32).

The draft of the letter prepared by Dorff and Levy (App. 34) was corrected by petitioner and sent back to them (App. 36–39). The letter in its final form, dated June 4, 1952 (App. 40–41), made the following statement of facts as to the cashing of the Chernoff bonds:

> We have been advised that a person came into the bank with a depositor of the bank, one Irving Mishel. This person signed the bonds in the presence of a teller of the bank and asked the teller to redeem the bonds. The teller asked for identification and Mr. Mishel, who was with that person, told the teller that Mr. Miller knew Mishel and that he was identifying the person as the payee named in the bonds. Mr. Mishel and the person with the bonds went over to Mr. Miller and the latter asked Mr. Mishel who the person was; Mr. Mishel introduced that person to Mr. Miller as Mr. Chernoff, the man in whose name the bonds were registered.

This was the basis for Count Three of the indictment.

ARGUMENT

1. *Sufficiency of the evidence.* In this Court petitioner is raising for the first time[3] an issue as to the sufficiency of the evidence to support his conviction. He contends (Pet. 30-32) that the statements in his letters to the Treasury Department were not of a material fact and were not fraudulent. He does not seriously argue that false statements were not made. There was ample evidence before the jury to show that statements in the letters were false. Thus the first letter not only contained the statement referred to by petitioner ("we were informed that the bonds were properly cashed") but also denied the government's assertion that petitioner had made payment to Mishel. The assertion in the second letter ("we feel that these bonds were cashed in good faith") was not a mere expression of opinion as suggested by petitioner. In the light of the evidence that petitioner knowingly cashed stolen government bonds in exchange for a portion of the proceeds, the jury was certainly justified in finding the second letter contained a fraudulent representation. The third letter[4] set forth an account of the circumstances of the cashing

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[3] This was not a ground urged in support of the motion for judgment of acquittal (R. 480–484) nor on appeal (Pet. App. 6–14).

[4] The fact that the third letter was signed by petitioner's counsel cannot excuse petitioner of responsibility for the false account which he gave his attorney and had the attorney send to the Government. The statutory language is broad enough to cover such circumstances, and petitioner does not appear to argue otherwise. (Pet. 17.)

which the jury could have found was wholly at variance with the truth (see the Statement, *supra*, pp. 6–8).

The thrust of petitioner's argument is that the statements, even if false, were not fraudulent because the government was not deceived, but conducted its independent investigation,[3] and because petitioner said that the claim was being turned over to the bonding company which eventually paid the claim. The false statements were made in an effort to resist a claim by the government which, under the true facts, could not be resisted. In the letter forming the basis of the first count, which alone would support the verdict, there is not even the promise on which petitioner relies, as to the claim being turned over to the bonding company. And in the others, petitioner was still resisting and attempting to get the government not to press the claim for reimbursement. The false statements were thus designed to deceive as to matters material to the government's claim. That the fraud was discovered and therefore ultimately unsuccessful in defeating the claim does not change the nature of petitioner's criminal purpose.

2. *Prior statements of witness Mishel.* Mishel testified that, about three years before trial, he gave to federal prosecutors a statement, running to about fifty pages, of all his activities in connection with stolen bonds (R. 197–203, 207). He testified that thereafter from time to time he made additional statements, usually oral (R. 207–208, 229–230). He said he had

[3] "Actually, the Treasury was, in due course, fully reimbursed * * *" (Pet. 16).

seen his master statement before trial, but no others (R. 230). He was asked whether at any time while he was in jail he urged a co-inmate Wissenfeld to give false testimony regarding a bond matter, and replied that he had no recollection (R. 242–243).

On October 22, 1956, petitioner asked for production of Mishel's statements, to be examined by the court under the then prevailing rule in the Second Circuit established by *United States* v. *Krulewitch*, 145 F. 2d 76 (R. 246). The court directed government attorneys to produce Mishel's statements in their possession (R. 246–247). On October 24, the court ruled (R. 369):

> The COURT. Before the jury comes back in, I had a chance to complete my work on the two statements that Mr. Hallinan had given to me.
>
> I am disposed to give one of them to the defendant. I am not going to give the defendant the master statement because I don't think there is any material inconsisteney that would be worthy of our attention and it does have many things in it that are unrelated to this case altogether.
>
> So I am going to mark the so-called master statement Court's Exhibit 3 and seal it. (Marked Court's Exhibit 3.)
>
> The COURT. The second statement is a statement of February 28, 1955, regarding this conversation with Wissenfeld which you cross-examined him on. I don't think it is material, but inasmuch as I don't see anything in here that could prejudice the Government for you to have, I would like for you to see the statement, and then if you want to ask for any re-

> lief on the basis of it we can't pass on it rather than my keeping it secret from you. * * *

The court asked defense counsel if he wanted to look at the document then or if they should proceed. Defense counsel stated he would have co-counsel look at it right away (R. 370). The following day, October 25, when court opened, the United States Attorney announced that he expected to put on two witnesses that morning and one in the afternoon and then rest (R. 429), which was just what he did (R. 430–477).

After argument on petitioner's motion for judgment of acquittal (R. 478–491) and a colloquy as to potential defense witnesses (R. 491–497), defense counsel asked what the court wished them to do about Mishel's statement of February 28, 1955 (R. 497). The court replied that it had given the statement to counsel for whatever relief counsel might request (R. 498). Defense counsel suggested that the statement could be offered in evidence or Mishel be recalled for cross-examination (R. 498). Counsel referred to language in the statement in which Mishel said he had bragged to Wissenfeld that the Miller case could not be tried without him and that he had the federal agencies in a position where he could embarrass them if they didn't aid him in an effort to have his state sentence reduced (R. 499). The court pointed out that the statement then went on to say that there was no such promise and that this was an attempt to impress jail acquaintances (R. 499). The court noted that Mishel on the stand had said he told a lot of untruths to his jailmates to impress them, and ruled that the

matter was not of sufficient materiality to bring Mishel back (R. 500). When counsel asked that they be given copies of a letter referred to in the statement and should not be penalized because the government had closed its case since Mishel was off the stand at the time, the court said (R. 502):

> But I don't see that that is crucial either. I think that the heart of the matter is that it isn't worth the time of the Court to go any further with respect to this letter because I think it is in substance and in weight exactly what he gave here on the stand. So, now, I will deny your applications on that.

(*a*) Petitioner's argument that these rulings constitute reversible error is unfounded. As the district court pointed out, the February 28 statement contained many things unrelated to the issues in the case, and there was no material inconsistency with Mishel's testimony on the stand (R. 369). Petitioner's counsel thought so little of its importance that they did not bring the matter up until after the motion for a judgment of acquittal had been argued. While the court did not rest its ruling on the fact that the government had rested its case, it is evident that the present claim that counsel was taken by surprise when the government rested its case is refuted by the record. Petitioner had the statement the day before and government counsel gave fair notice of the time when he expected to rest (R. 429). It was well within the area of the trial court's discretion to refuse to recall a witness, who had been thoroughly cross-examined, for further cross-examination on a matter as to which he had already testified.

(*b*) Under the rule of *Jencks* v. *United States,* 353 U. S. 657, and under present law, defense counsel would have been entitled, if he so requested, to examine those portions of Mishel's master statement which related to his testimony at the trial. The court below properly ruled, however, that the failure to turn over such statement did not constitute reversible error. Here, unlike *Jencks,* the court did look at the statement and found that it was consistent with Mishel's testimony. Petitioner was satisfied with the then prevailing rule in the Second Circuit. He had so little expectation that the Court of Appeals would find the statement inconsistent that he did not have it sent up to the Court of Appeals, although it had been sealed by the district court. By his own action he thus precluded any finding that he was prejudiced by not having the statement.

Mishel on the stand admitted numerous criminal activities, and, as noted above, admitted telling untruths in his boasting to fellow inmates. As to the matters crucial to this case, the cashing of the Chernoff bonds, it was the corroborating testimony of the three bank tellers and the exhibits (which in themselves would appear sufficient to establish the knowing falsity of petitioner's statements) that served to give credibility to Mishel's testimony. The error in failing to turn over relevant portions of the master statement was, therefore, in the circumstances, harmless. See Brief for the United States in Opposition, *Sheba Bracelets* v. *United States,* No. 556, this Term.

3. *Prior statement of witness Sershen.* Special Agent George J. Sershen was testifying on cross-ex-

amination about receiving a letter from the Treasury Department indicating that petitioner's bank was resisting the payment of the amount due on these bonds, whatever it was. Petitioner's counsel stated the amount (R. 475):

> Q. $6,684.50. A. I don't remember the amount, I don't remember the exact amount in the letter. At any rate, there was a request made in that letter for an additional report from me concerning the negotiation of the bonds and the part that Mishel and Mr. Miller played. And I submitted a report in answer to that letter. That may be the letter you are referring to, but I cannot remember the exact date.

This is the only reference in the record as to the possible existence of a report by Sershen other than the one the United States Attorney voluntarily gave the defense without request (R. 424–425). Such "additional report" was never mentioned again during the trial and no request was ever made for its production. The present contention that it was error not to order production of this further report, if such it was, is thus without merit.

4. *Cross-examination of petitioner.* Petitioner testified at length on direct examination as to his life history, his career in the banking business, and his civic activities (R. 583–593). He also testified that he had never heard the expression "stiff accounts" until the investigation of the bonds (R. 610).

On cross-examination he was asked if he had not heard the expression in 1931, when the State Banking Department compelled him to close several such ac-

counts. He replied that he did not recall, he would not say it had not happened (R. 667). He was asked several questions of similar nature and gave similar answers (R. 667–668).

Government counsel asked if petitioner remembered criticism by the former president of his bank for making loans to bookmakers, to which he answered he did not remember (R. 668). At this point petitioner's counsel objected to the entire line of testimony (R. 668). The court said he would overrule that objection, but would rule on objections to individual questions (R. 668–669). Government counsel then asked whether petitioner recalled any time when the president of the bank criticized him for allowing bookmakers to draw against uncollected funds. Objection was made, which the court sustained because of the word "criticizing", but said counsel could ask as to the conversation which took place. The following then took place:

> Mr. ROSENBLUM. My objection is based upon the fact that your Honor said in connection with the examination of witnesses you would limit it only to convictions.
>
> The COURT. No, as going to credibility, I let you go into matters going to credibility as to false testimony as to his prior convictions. You explored that fully.
>
> Mr. HALLINAN. I think I am proceeding on the theory with which your Honor is well familiar, 224 Fed. (2d), the *Pagano* case. On his direct examination there are about 20 pages in the record of his background at the bank.
>
> Mr. ROSENBLUM. Exception. [R. 669–670.]

Government counsel then proceeded to ask a series of questions as to petitioner's career in the banking business, as to kiting of checks, examination by the State Banking Department in 1931 as to allowing a certain individual to make book in a public telephone in the lobby of the bank, whether he allowed accounts in fictitious names, whether he had lent money in excess of the statutory amount, whether there was a full scale investigation by the banking department of his practice in that regard, whether he ever certified checks against uncollected funds, to all of which questions petitioner either answered in the negative or said that he did not recall (R. 670–672).

There is no merit in the contention (Pet. 32–39) that this was improper cross-examination. Petitioner was endeavoring to present himself to the jury, as he does in the statement of facts in this petition for a writ of certiorari, as a reputable banker to whom it would be incredible to impute the actions testified to by Mishel. It was relevant to bring out, by cross-examination, that the integrity of petitioner's banking operations had been questioned long before the matters to which these specific charges related. There is no suggestion that government counsel did not have reason to believe that the events asked about had happened and that truthful answers would have confirmed their existence. *United States* v. *Pagano*, 224 F. 2d 682, 686 (C. A. 2), certiorari denied, 350 U. S. 884, shows the propriety of such questions under the circumstances.

CONCLUSION

For the foregoing reasons, it is respectfully submitted that the petition for a writ of certiorari should be denied.

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